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ORIGIN OF THE SYSTEM OF MANDATES UNDER THE LEAGUE OF NATIONS

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The present arrangements for the government of the colonial territories taken from Germany and Turkey in the World War, arrangements which may collectively be described as the system of mandates under the League of Nations, may work well or they may work badly. They may persist into an indefinite future, they may come to an abrupt termination and leave nothing of their own kind in their place, or, most probable of all, they may be progressively modified in one way or another with the passage of time and changes of circumstances. But, whatever happens hereafter, the present system is now an accomplished fact, and will necessarily be taken as the basis for any action in the future. The apparent inclination of at least one great power to insist upon all its rights in former German and Turkish territories now under mandate to other powers, and the firmness of the latter in defending their position under the mandate system, indicate, further, that the present system has already created rights, interests, and claims on one side and another which will call for constant consideration and regulation as time goes on. There seems to be ample reason, therefore, for making an effort to discover and understand the origin of the mandate system, and

its nature and purpose as it was established in the years 1919–1920. Moreover, in the course of the investigation there will be revealed most of the influences which contributed to produce the League Covenant as a whole; the mandate system affords an easily isolated sample of the whole process of international reorganization in these years.

It is a common impression that the provisions of the Covenant of the League of Nations relating to mandates[1] are to be found there as a result of the ideas, policies, and efforts of President Wilson. It is also known that General Smuts played some part in creating the mandate system. Just what part each played may be discovered from a review of the way in which this portion of the Covenant was drafted.

There was a common agreement among the allied and associated powers as they gathered in Paris in December and January, 1918–1919, that the colonies and territories taken from Germany and Turkey in the course of the war should not be returned to those powers. There remained the task of deciding upon their future disposition apart from their former masters. Most, if not all, of these territories and colonies were, or at least were felt to be, incapable of assuming the rôle of independent states in their own names and in reliance upon their own strength. On the other hand, to divide them among the victorious powers would look bad in view of what had been said about the iniquity of conquest and the rights of peoples to live their own lives, and so on; further, an attempt to divide the spoils would provide too great an opportunity for dissensions among the Allies themselves. Nothing remained but international control—in some form and to some degree, as should seem best.

This situation had already occurred to various persons as they contemplated the possible settlement. It had led General Smuts,—who might or might not have favored a policy of annexation if that had been possible,[2]—to devise a plan of settlement

[1] Covenant of the League of Nations, Article XXII.

[2] See assertion that he favored a policy of annexation in Scott, A. P., *Introduction to the Peace Treaties*, Chicago, 1920, p. 68; it will also be noted later that

which may best be stated in his own words as these are found in a booklet entitled *The League of Nations: A Practical Suggestion*, which he published on December 16, 1918:[3]

"As a programme for the forthcoming peace conference I would therefore begin by making . . . . certain . . . . recommendations:

". . . .

"(2) That so far at any rate as the peoples and territories formerly belonging to Russia, Austria-Hungary and Turkey are concerned, the league of nations should be considered as the reversionary in the most general sense and as clothed with the right of ultimate disposal in accordance with certain fundamental principles. Reversion to the league of nations should be substituted for any policy of national annexation.

". . . .

"(3) These principles are: firstly, that there shall be no annexation of any of these territories to any of the victorious Powers, and secondly, that in the future government of these territories and peoples the rule of self-determination, or the consent of the governed to their form of government, shall be fairly and reasonably applied.

". . . .

"(4) That any authority, control, or administration which may be necessary in respect of these territories and peoples, other than their own self-determined autonomy, shall be the exclusive function of and shall be vested in the league of nations and exercised by or on behalf of it.

". . . .

"(5) That it shall be lawful for the league of nations to delegate its authority, control, or administration in respect of any people or territory to some other state whom it may appoint as its agent

Smuts did not, in his plans, extend his idea of mandates to the former German colonies (see text of Smuts plans, below, second suggestion). See also Baker, R. S., "War Spoils at Paris," in *New York Times*, 28 May, 1922, sec. 7, p. 2, col. 1.

[3] Smuts, J. C., *The League of Nations: A Practical Suggestion*, London, 1918, reprinted in the United States by The Nation Press, 1919. The plan was also circulated privately in mimeograph form among the leading representatives at Paris. The edition of The Nation Press is cited hereafter.

as mandatary, but that wherever possible the agent or mandatary so appointed shall be nominated or approved by the autonomous people or territory.

"(6) That the degree of authority, control, or administration exercised by the mandatary state shall in each case be laid down by the league in a special act or charter, which shall reserve to it complete power of ultimate control and supervision, as well as the right of appeal to it from the territory or people affected against any gross breach of the mandate by the mandatary state.

". . . .

"(7) That the mandatary state shall in each case be bound to maintain the policy of the open door, or equal economic opportunity for all, and shall form no military forces beyond the standard laid down by the league for purposes of internal police."[4]

From a comparison of these paragraphs with the terms of Article XXII of the Covenant it will already be clear that the provisions in the Covenant were taken, directly or indirectly, from the plan of General Smuts. If, now, we work forward from the publication of General Smuts' book to the adoption of the final text of the Covenant in April, 1919, we shall discover how the suggestions of the South African statesman came to be inserted in the Covenant.

In his suggested plans General Smuts had started out in part from the Fifth of President Wilson's Fourteen Points. At the time Smuts' book appeared, however, Wilson was himself in Europe,[5] and the President therefore had an opportunity to see what practical detailed plans could be made out of the statement of principle with which he had been content in the previous January. Since that time the President had, indeed, drawn up a plan of his own for a league, but upon the subject of the treatment of the former German and Turkish colonial territories it contained nothing at all. He now had the opportunity to revise his plan so as to include matters deemed worthy of addition thereto. His plan was divulged to Secretary Lansing and

[4] Smuts, pp. 9–19.

[5] Wilson arrived at Brest on Friday, 13 December, 1918.

ordered printed, 7–10 January, 1919, and at that time it carried certain "Supplementary Agreements," among which were three Articles dealing with colonial territories.[6] The President had, apparently, both in the previous January, in announcing his Fourteen Points, and ever since then, regarded the colonial settlement, like the boundary settlements in Europe, as a matter to be dealt with prior to and apart from any League of Nations, as a settlement of concrete political matters on the foundation of which and for the protection of which the league was to be created. In that view his stipulation for "an impartial adjustment of all colonial claims" based both on the principle of self-determination and the claims of ruling governments, envisaged not an internationalization of the former German colonies but a fair distribution thereof to all parties in interest. He now adopted a very different position. Both the nature of these "Supplementary Agreements" and their possible source may be discovered from their terms, especially when compared with the plans of General Smuts already examined.

"SUPPLEMENTARY AGREEMENTS"

I

"In respect of *the peoples and territories*[7] which *formerly* belonged to *Austria-Hungary, and to Turkey*, and in respect of the colonies formerly under the dominion of the German Empire, *the League of Nations* shall be regarded *as* the residuary trustee *with* sovereign *right of ultimate disposal* or of continued administration *in accordance with certain fundamental principles* hereinafter set forth; and this *reversion* and control shall exclude all rights or privileges of annexation on the part of any Power.

[6] Wilson's plan was first made known to those near the President and ordered printed on 7 January, 1919, and at that time it did contain the "Supplementary Agreements" covering, among other things, colonies and mandates. But, as Lansing believes, and as we shall see by reference to internal evidence in the matter, these "Supplementary Agreements" had only recently been added to the draft. Lansing, R., *The Peace Negotiations*, New York, 1921, pp. 77–81, 82–83, 86.

[7] Italics mine; the words italicized occur in the Smuts' proposals and in the same order in which they occur here.

"*These principles are, that there shall* in no case *be* any *annexation of any of these territories* by any State either within the League or outside of it, *and that in the future government of these peoples and territories the rule of self-determination, or the consent of the governed to their form of government, shall be fairly and reasonably applied,* and all policies of administration or economic development be based primarily upon the well-considered interests of the people themselves.

II

"*Any authority, control, or administration which may be necessary in respect of these peoples or territories other than their own self-determined* and self-organized *autonomy shall be the exclusive function of and shall be vested in the League of Nations and exercised or undertaken by or on behalf of it.*

"*It shall be lawful for the League of Nations to delegate its authority, control, or administration of any* such *people or territory to some* single *State* or organized agency *which it may* designate and *appoint as its agent or mandatory; but* whenever or *wherever possible* or feasible *the agent or mandatory so appointed shall be nominated or approved by the autonomous people or territory.*

III

"*The degree of authority, control, or administration* to be *exercised by the mandatary State* or agency *shall in each case be* explicitly defined *by the League in a special Act or Charter which shall reserve to* the League *complete power* of *supervision* and of intimate *control,* and which shall also *reserve to the people* of any such territory or governmental unit *the right* to *appeal to* the League for the redress or correction of any *breach of the mandate by the mandatary State* or agency or for the substitution of some other state or agency, as mandatary.

"*The Mandatary State* or agency *shall in all cases be bound* and required *to maintain the policy of the open door, or equal opportunity for all* the signatories to this Covenant, in respect of the use and development of the economic resources of such people or territory.

"The mandatary State or agency *shall* in no case *form* or maintain any *military* or naval *force* in excess of definite *standards laid down by the League* itself *for the purposes of internal police.*"

From this preliminary history of the matter it is not surprising to hear of Wilson's "strong support of the mandatory system" in the ensuing weeks. Between 10 January, when the President's plan was printed, and 18 January nothing was done outside of informal conversations among the participants in the prospective conference looking to a better understanding of each other's positions.[8] On 18 January the Peace Conference of Paris met, on 25 January a commission was named to draft a Covenant for a League of Nations, on 13 February a tentative draft of the Covenant was agreed upon and on 14 February this draft Covenant was reported to the conference.

Curiously enough, the mandate plan did not come up for discussion in the commission on the League of Nations directly nor did the commission draft the main parts of Article XXII of the Covenant which embodies that plan.[9] The disposal of the German and Turkish territories was a matter of such political and economic importance that it arose in discussion in the Supreme Council at a very early date.[10] It was here that President Wilson so vigorously supported the mandate plan and its application to the German colonies against the opposition of Mr. Hughes of Australia, if not of General Smuts himself.[11] Agreement was reached on 30 January for the adoption of the plan, and the provisions of Article XXII were, still in the form of a resolution adopted by the Supreme Council, turned over to the commission on the League of Nations for incorporation in the Covenant.

[8] For one important aspect of these conferences of 10–18 January see testimony of Bullitt, W. C., before United States Senate Committee on Foreign Relations, 12 September, 1919, in United States, Senate, "Treaty of Peace with Germany," being Senate Document No. 106, 66th Congress, 1st Session, pp. 1165, 1214.

[9] Miller, D. H., "The Making of the League," in House, E. M., and Seymour, C., *What Really Happened at Paris*, New York, 1921, pp. 411–412.

[10] On 23 January; Baker, "War Spoils," as cited, *New York Times*, 28 May, 1922, sec. 7, p. 1, col. 1.

[11] Miller, as cited, p. 412; also Hudson, M. O., "The Protection of Minorities," in same, p. 225.

Before going further it will be useful to analyze the provisions of Article XXII of the Covenant in order to discover just what specific principles are included in the mandate system. A study of the text reveals seven principles or rules which may be listed thus: (1) Colonial territories taken from the enemy are not to be annexed by the victorious powers; (2) These colonial territories are to be put under the joint sovereignty of the allied and associated powers; (3) They are entrusted to the tutelage of certain individual advanced nations; (4) This tutelage is to be exercised by the mandataries under the supervision of the league; (5) The open door is to be maintained in colonial territories so far as the mandatary has any power over them as such; (6) Natives shall be used in a military capacity only for local defense and police; (7) The people of the mandated territories are to have a voice in the choice of the mandataries.

If, we trace back through the draft plans for a league[12] we shall discover that all of these principles appeared in General Smuts' proposals, and a reference to the texts of his proposals and of Article XXII reveals that certain of his own words and phrases make their appearance in the draft of the Covenant reported by the commission on 14 February and, finally, in the text as now in force. Needless to say, these principles and still more of the words of Article XXII, are all present in President Wilson's plan.

A further comparison of Article XXII of the Covenant with the terms of General Smuts' plan will, however, reveal the fact that, while all the fundamental principles of Article XXII are to be found in the Smuts plan, not all the fundamental principles of the latter remain in Article XXII.

Most important of all, Smuts had argued that, "as the successor of the empires"—as he put it elsewhere—the league "should be considered as the reversionary" to whom these

[12] There were, of course, several plans for the league beside those of Smuts and Wilson. They are described, with what the present writer is compelled to believe are some errors, by Mr. Ray Stannard Baker in an article entitled "Beginning of the League Fight," a chapter from his forthcoming work entitled "America and the World Peace," printed in *New York Times* for 14 May, 1922, sec. 8.

territories should pass "with the right of ultimate disposal,"[13] and President Wilson adopted this principle intact, merely using the terms "residuary trustee" instead of "reversionary."[14] So things stood when Wilson had revised his plan in the beginning of January, 1919. Now Wilson's plan was shortly swallowed up in a joint plan laid before the Commission on the League Covenant, wherein no mention was made of the whole matter of mandates; accordingly, we must assume that this proposal to have the league take title to the former German and Turkish territories, which does not appear in the final Covenant, vanished in the course of debates in the Supreme Council. We are told that Wilson was not entirely satisfied with the decisions made in the council, feeling that they did not go far enough in the direction he had indicated, and that he vigorously objected to the idea of a condominium of the victorious powers over the territories in question.[15] Nevertheless, in the end Germany was compelled, by Article 119 of the Treaty of Versailles to cede her colonies not to the league but to the allied and associated powers, and from certain corrections which he is reported to have made in the text of his own plan between 10 and 25 January, 1919, after consultation with French and British leaders (striking out "with sovereign right of ultimate disposal" in Article I of the "Supplementary Agreements")[16] the President seems to have been weaned away fairly early from the idea of giving the league ultimate title to the territories in question. This impression is confirmed when we turn to the draft submitted by the American delegates to the Commission on the League of Nations and which may be regarded as the last version of Wilson's own plan; there likewise the idea of reversion of title to the league is conspicuously absent.[17] And whatever its origin, and notwithstanding that it is not found in Article XXII of the Covenant, this element of allied con-

[13] Above, p. 565.
[14] Above, p. 565.
[15] Miller, p. 412; Lansing, p. 150.
[16] Bullitt, pp. 1214, 1218.
[17] United States, Senate, "League of Nations: American Draft," being Senate Document No. 70, 66th Congress, 1st Session, Washington, 1919.

dominium—not league title—is an integral part of the mandate system as finally adopted.

For the period between the armistice and the final adoption of the Covenant, therefore, President Wilson and General Smuts, and particularly the latter, may be regarded as the authors of the mandate system.

If we wish to understand the ultimate sources of the mandate system, however, we must go back of the appearance of the Smuts plan in December of 1918 and the various American plans and revised plans, and the events of the succeeding four months. That may best be done by starting from the declarations of principle found in the Smuts proposals and by tracing down the influences playing upon Smuts at the time when he was writing his little book.

While composing his pamphlet on the projected League of Nations in 1918 General Smuts is said to have enjoyed the collaboration of certain students of imperial and international affairs in England known as the "Round Table group," from the fact that most of these students are, or have been, associated with the English political quarterly "The Round Table."[18] If we turn to the writings of this group during 1915–1918, and to the writings of allied students of international relations we shall discover certain significant facts.

Many people already felt that some reform was needed in the manner of holding and governing colonial territories in general. The approaching settlement, and the necessity for a decision as to the disposition and future government of the former Turkish and German colonial territories, provided opportunity for such reform. Finally, some form of international control seemed to offer the best way out of the difficulties of the situation.

Thus, early in 1915 Mr. C. E. Fayle, writing more or less upon the basis of articles in the "Round Table," the "Oxford Pamphlets," and consultation with C. R. Buxton and J. M. Keynes, declared:

"It is obvious that no one nation (Britain) can undertake to open up the whole undeveloped surface of the globe; and it is

[18] Miller, as cited, p. 402.

eminently desirable that some attempt should be made to secure agreement and coöperation in the carrying on of the work. It is earnestly to be hoped that the policy of the open door which Britain has adopted in her overseas dominions may be extended to the colonial possessions and spheres of influence of all the Powers. . . . . The only way to avert such a scramble (for colonial territories formerly held by Turkey), with all its attendant friction, would be an equitable and friendly agreement by the Powers for the protection of their joint and several interests."[19]

Here the theory of international control is very weak, but the general drift of the thought in that direction can be clearly detected. The conclusion is hardly more than an expansion of the suggestions of H. N. Brailsford, made in the same year, in his *Sketch of a Federal League* for a general colonial open door.[20] Indeed, at one point Fayle rather hints at agreed partition. But mention is made of joint interests and joint action for their protection, and this looks forward in a very decided manner.

During 1916 these ideas developed in the minds of other students of the problem. P. H. Kerr, then editor of the "Round Table," in dealing with the general subject of the political relations between advanced and backward peoples, wrote of the "duties of trusteeship" resting upon the former for the welfare of the latter, including the duty of aiding the backward peoples to attain a capacity to "govern themselves," declaring this to be the ultimate "purpose of the tutelage of the backward by the advanced races." He concluded that "the ruling people ought to govern the dependency as trustees for all mankind," and that "all other nations have an equal title to trade and communicate with them subject to whatever restrictions are necessary for the welfare of the inhabitants."[21] Here are three or four of the principles of the mandate system, and a clear implication that something must be done to enforce these principles of trusteeship.

[19] Fayle, C. E., *The Great Settlement*, New York (and London), 1915, pp. xii, xiii, 194, 195–196.

[20] Brailsford, H. N., *The War of Steel and Gold*, New York (and London), 1915, p. 336 (3d edition).

[21] Grant, A. J., and others, *International Relations*, London, 1916, Chap. V, by Kerr, P. H., pp. 170, 171, 179, 181.

For the clearest anticipation of the mandate system among English students prior to the appearance of General Smuts' book, however, we must turn to a work of J. A. Hobson entitled *Towards International Government*. In that work[22] Hobson points out the amount of international friction caused by competition in the colonial world and by the exclusion of alien capitalists or merchants from colonial territories by those states having them under sovereignty. He also points out the conflict of interest between the governing state and the natives, and the vices of native exploitation. He then asks what a hypothetical international council could do to remedy this situation. He admits that the council might content itself with merely supervising a supposedly fair partition of the colonial world, allowing the colonial states to exclude alien capitalists and merchants from their holdings thereafter, but contends that this would be the worst possible procedure in that it would eventually intensify all the evils it was designed to cure. He then continues: "Or a 'partition' might be made (under the International Council) which, having regard to the special political and economic interests of particular nations by virtue of accessibility or established connections, would acknowledge a special right of intervention and even of political control, but with an express agreement to maintain an open door and equality of opportunity for the capital and trade of other nations. This principle has been embodied, more or less completely, in some recent treaties between several Powers, though lack of adequate guarantees for the faithful performance of the undertakings has made such arrangements exceedingly precarious."[23] Here we have the elements missing from the suggestions just reviewed: the "undertaking" on the part of a protecting nation, chosen because of traditional interests and capacities for watching over a particular colonial territory under the supervision of the "International Council," to observe the principle of the open door in the management of the territory "partitioned" out to it for that purpose—but

[22] Hobson, J. A., *Towards International Government*, New York (and London), 1915, pp. 138–141.

[23] Hobson, p. 141.

not annexed to it in full sovereignty. In the absence of direct evidence, we must, on the basis of the internal evidence and the fact that Smuts is said to have conferred with this group of students in developing his plan in 1918, conclude that these ideas of Hobson provided the South African statesman with the essentials of his mandate plan.[24]

It will be noted, however, that Hobson speaks of this sort of thing having been tried already, albeit without great success, "in some recent treaties." This indicates that certain experiments had been made in the direction of joint international sovereignty and administration in recent years. General Smuts clearly had these in mind when developing his proposals, for he specifically mentioned such "experiments" in his discussion of possible methods of action for the future.[25] He is careful to distinguish between joint title and joint administration, however, and while discarding the idea of joint administration as unworkable—and thus reaching the decisive reason for adopting the mandate system—he retains the principle of condominium by providing for league tenure (and mandate administration).

There is no necessity for describing here the various cases of condominium arising in recent years. After all, not joint title but joint administration is the important thing. It is to recent attempts at international administration or international control of national administration that we must turn. If, therefore, we revert once more to the text of General Smuts' proposals we may pick up a trail which leads straight back into the history of the past twenty-five years and provides the most satisfactory explanation of the genesis and purpose of the mandate system to be obtained anywhere.

General Smuts started out from the idea that annexation to individual victorious nations of the conquered colonial territories and their retention in the exclusive power of these nations was undesirable. That is, he started from the principles of "no

[24] Hobson repeated these ideas—less clearly, however, in 1916: Hobson, J. A. H., "The Open Door," in Buxton, C. R., ed., *Towards a Lasting Settlement*, New York, 1916, pp. 85–109, esp. 106–107.

[25] Smuts, work cited, pp. 14–16.

annexations," "self-determination," and the "open door." He says as much in his own words, and in his proposals these ideas are set down emphatically and repeatedly.[26] Finally, as has been seen, they were taken up one by one by President Wilson and finally put into the text of Article XXII.

But if President Wilson took these ideas, and the detailed proposals designed to render them effective, from General Smuts, and by his efforts placed them in the Covenant, General Smuts himself, it might be said, took them from President Wilson. In making such a statement, however, care would have to be taken to keep within the strict limits of the truth.

In the first place, as Smuts excluded the former German colonies from his proposals for the mandate system the fact that he accepted the Fifth of Wilson's Fourteen Points for application to those territories cannot be regarded as a taking of Wilsonian material for use in building the plan for mandates. Rather it indicates that, as respects these colonies Smuts was, in December 1918, in precisely the position on the colonial question originally held by Wilson,[27] a position now abandoned by the latter for advocacy of the mandate plan.

Further, when speaking of the territories for which he did advocate the adoption of the mandate plan Smuts does not refer to Wilson's Fourteen Points at all, nor, indeed, to any specific source for his doctrine. He simply invokes the principles of no annexations, self-determination, and the open door. If we conclude that he took these principles from the Wilson creed at all it must be because of circumstantial evidence.

For the principle of the open door that conclusion is probably sound. The doctrine of the open door does not appear *eo nomine* in the Fourteen Points, but "equality of trade conditions among all the nations" is demanded in the Third Point, and possibly this is partly what Wilson had in mind. At all events, the policy of the open door is a traditional American policy and neither President Wilson nor General Smuts nor anyone else could, in 1918, urge that policy and employ that phrase without, con-

[26] Above, pp. 565–566.
[27] Above, pp. 566–567.

sciously or unconsciously, adopting and supporting an historic American doctrine.

The open door policy has not, it is well recognized, been uniformly effective in practice and the policy has been so unevenly and ineffectively applied in the Far East largely because of the absence of any requirement for supervision by or report to the community of nations as a whole. The nations interested in certain sections of China could be held to the open door policy not by any general international supervision but only by the efforts of the United States or Britain, acting singly, and the United States could not invoke the terms of any mandate or similar document limiting the free action of the exploiting nations there. The thing needed to make the open door principle effective was the device of the mandate with general international supervision in connection therewith.

That particular solution of the problem was discovered more than a dozen years before the mandate system was actually established in the League Covenant. It was discovered by an American President and an American secretary of state. It was described and prescribed by them in words which anticipate the action of 1919 in almost every detail.

The story may be told in a few words. In 1905 France and Germany became involved in a dispute regarding their relative rights and interests in Morocco and regarding certain French actions which, Germany alleged, violated German rights there. An arrangement was sought, in the Conference of Algeciras, in the following year, which would satisfy German claims and yet allow to France the special power and influence in Morocco which she claimed on grounds of propinquity and special interest. In the course of events, as a result of the fact that the United States had been instrumental in having the conference meet originally, had taken a leading part in formulating the preliminaries of discussion, and stood in a peculiarly favorable position to suggest a solution of the difficulty, Mr. Elihu Root, the American secretary of state, engaged in a long correspondence with the German ambassador in Washington in the spring of 1906, the most essential parts of which follow:[28]

[28] Bishop, J. B., *Theodore Roosevelt, and his Time as told in his Correspondence*, New York, 1920, pp. 489–491, 493–495, 495–497, 497–499.

Secretary Root to Baron Speck von Sternberg, 19 February, 1906:

"The President has been keeping in mind the suggestion of your memorandum of January 29th that the United States should propose to entrust the Sultan of Morocco with the organization of the police forces within his domains and to allow him certain funds, and to establish an international control with regard to the management of these funds, and the carrying out of the whole plan.

". . . . If it is acceptable to Germany, the President will make the proposal suggested with the following details, which should, perhaps, be called modifications, but which he does not consider to interfere with the accomplishment of the end Germany had in view in securing the conference. He will propose:

"1. That the organization and maintenance of police forces in all the ports be entrusted to the Sultan, the men and officers to be Moors.

"2. That the money to maintain the force be furnished by the proposed international bank, the stock of which shall be allotted to all the powers in equal shares (except for some small preference claimed by France, which he considers immaterial).

"3. That duties of instruction, discipline, pay and assisting in management and control be entrusted to French and Spanish officers and non-commissioned officers, to be appointed by the Sultan on presentation of names by their Legations.

"That the senior French and Spanish instructing officers report annually to the government of Morocco, and to the government of Italy, the Mediterranean Power, which shall have the right of inspection and verification, and to demand further reports in behalf of and for the information of the Powers. The expense of such inspection, etc., etc., to be deemed a part of the cost of police maintenance.

"4. That full assurances be given by France and Spain, and made obligatory upon all their officers who shall be appointed by the Sultan, for the open door, both as to trade, equal treatment and opportunity in competition for public works and concessions.

"The foregoing draft has been carefully framed with reference to the existing situation at Algeciras, so as to give it a form which

would make concessions from the French position as easy as possible, and the President thinks that it conserves the principle of the open door without unduly recognizing the claims which rest upon proximity and preponderance of trade interests. He thinks it is fair, and earnestly hopes that it may receive the Emperor's approval."

Secretary Root to Baron Speck von Sternberg, 7 March, 1906:

"May I ask you to transmit to the German Emperor a message from the President which is as follows:

". . . .

"Under these circumstances, I feel bound to state to Your Majesty that I think the arrangement indicated in the above mentioned letter of February 19th is a reasonable one, and most earnestly to urge Your Majesty to accept it. I do not know whether France would accept it or not. I think she ought to do so. I do not think that she ought to be expected to go further. If this arrangement is made, the Conference will have resulted in an abandonment by France of her claim to the right of control in Morocco answerable only to the two Powers with whom she had made treaties and without responsibility to the rest of the world, and she will have accepted jointly with Spain a mandate from all the Powers, under responsibility to all of them for the maintenance of equal rights and opportunities. And the due observance of these obligations will be safeguarded by having vested in another representative of all the Powers a right to have in their behalf full and complete reports of the performance of the trust, with the further right of verification and inspection.

". . . ."

Ambassador Speck von Sternberg to President Roosevelt, 13 March, 1906:

"The Emperor's answer to your letter transmitted by me on the 7th instant is as follows:

"Mr. President: . . . .

"I have also given to your recent statements in all points my fullest attention and entirely agree with you that a mandate given by the Conference to France and Spain differs in a judicial sense essentially from any action on the part of France based

solely on special agreements with England and Spain. Such a mandate would give to France a certain monopoly in Morocco which would prejudice the economical equality of the other nations, if no sufficient international counterpoise were created. . . . . "

Secretary Root to Baron Speck von Sternberg, 17 March, 1906:

"It may be useful for me to re-state in writing the answer of the United States, already given to you orally, to the questions which you have asked regarding our course upon the proposal made by Austria on the 8th instant in the Algeciras Conference.

". . . .

"This view of international right was interposed against the claim of France to organize the police in Moroccan ports through the agency of her officers alone. France has yielded to this view of international right to the extent of offering to become, jointly with Spain, the mandatory of all the powers for the purpose of at once maintaining order and preserving equal commercial opportunities for all of them. It was further proposed that an officer of a third power, acting in behalf of all the powers, should have the right of general inspection for the purpose of keeping the powers advised whether their agents, France and Spain, were observing the limits and performing the duties of their agency. This arrangement seemed to us to accomplish the desired purpose. It seemed with two mandatories jointly charged, no individual claim of possession or control was likely to grow up; that, with the constant reminder of the general right involved in the inspectorship, the duties of the agency were not likely to be forgotten and it seemed that the proximity of France and Spain to Morocco, and their special interest in having order maintained in that territory made it reasonable that they should be selected as the mandatories rather than any other powers.

". . . ."

A reading of this correspondence finally reveals the most important source of the mandate system, including the use of the very word itself. The general right of most-favored-nation treatment, or equality of trade rights, accorded to foreign nations in Morocco by Article XVII of the Madrid Convention of 1880, was taken up by the United States, more or less upon the sugges-

tion of Germany, in a renewed expression of the open door policy, and a mandate scheme was invented to make this effective, while providing protection to the natives and also allowing special privileges and authority to the most interested nation, acting under a mandate and subject to international supervision in its acts. This was all put into Articles I-XII of the General Act of Algeciras. It was this treaty which Hobson had in mind in 1915, and cited as an example of what he thought should be done in the future with colonial territory.[29] Thus the American device of 1906 passed through Hobson to Smuts and so back through Wilson into the Covenant.

Two threads remain to be caught up and woven into the fabric of this story before the whole is complete. Of all the elements in the mandate system as already analyzed five have now been traced to their sources, namely: the open door principle; national administration in trust for interests of the natives and the world at large, including those of the administering nation; international supervision of the execution of this mandate; condominium by the Allies instead of sovereignty in the league; and restrictions upon the military use of native inhabitants. What of the twin principles of no annexation and self-determination, or the supposed right of the colony to choose its own mandatary, which go to complete the mandate system as created in 1919?

If we turn again to the plan of General Smuts we find, first, that he couples the principle of "self-determination" with that of "no annexation," and, second, that he brings forward the idea of reversion to the league out of the clear air, simply as a way out of a difficulty.[30] Wilson took these ideas over bodily from Smuts and it was only as a result of the debates in the Supreme Council that the second was modified against his desires into an allied condominium. Where, then, did they originate?

If we turn back to Wilson's Fourteen Points of 8 January, 1918[31] we shall find no use of the phrases "no annexations" and "self-

[29] Hobson, p. 141. The writer feels entitled to record the fact here that he was familiar with the Root-Sternberg correspondence, including its invention of the mandate system, before he read Mr. Hobson's reference to the Act of Algeciras.

[30] Above, pp. 565–566.

[31] Carnegie Endowment for International Peace, Division of International Law, "Official Statements of War Aims and Peace Proposals, December 1916 to

determination." But these phrases do appear in the statement of war aims made by Lloyd George on 5 January,[32] and the principles which they express are implicit in the Fourteen Points[33] and both Lloyd George and Wilson employed both phrases on other occasions before and after the dates of their principal declarations.[34] In a general sense, then, Smuts was doing here what he was doing in the case of the open door policy, taking a principle which had become part of the general allied political doctrine, as expressed largely by President Wilson.

More specifically, Smuts himself used the formula "no annexations, and the self-determination of nations" (his quotation marks), and declared that the principles which he had in mind had been expressed by that formula "for the last two years." Of what was he thinking? Obviously, of the cry "No annexations, no indemnities, and the self-determination of nations," which arose in central and eastern Europe, in German and Russian socialistic circles in 1917, and was adopted all over the western world in the course of the next two years as an expression of socialist and radical and liberal opposition to a militarist peace. Just when those words were first put together in that sense and by whom, it would be difficult to say, and the results would probably not justify the labor required to discover them.[35] Suffice it to say that, expressing in part the opposition to conquest and

November 1918," being *Pamphlet No. 31* of the Division, comp. by Potter, P. B., pp. 234–239.

[32] Same, pp. 225–233, especially p. 228.

[33] In Points VI, VII, IX–XII; same, pp. 237, 238.

[34] Wilson had said on 2 April, 1917, in asking the United States Congress to declare war on Germany: "We desire no conquest, no dominion. We seek no indemnities. . . . . We are. . . . champions of the rights of mankind," and these rights he had just described as "the rights of nations . . . . to choose their ways of life and obedience" (same, p. 91); and in asking for a declaration of war upon Austria Hungary on 4 December, 1917, he used "the formula 'No annexations, no contributions, no punitive indemnities' " to express the war aims of the Allies (same, p. 195).

[35] No official statement of war aims made before the address of April 2 comes anywhere near the formula; on May 19 there occurred in a statement of war aims made by the Russian Provisional Government the statement that that government did not seek "a peace with annexation or indemnity and based on the right of nations to decide their own affairs" (same, p. 102).

war indemnities and imperial oppression which had been growing widely during the later nineteenth and early twentieth centuries in all lands, and in part the highly specific German-Russian socialist and liberal criticism of official war aims in 1917–1918, they had a determining influence on the professed aims of the Allies and so, through the declarations of Lloyd George and Wilson and the proposals of General Smuts, made their way into the mandate system of the League of Nations.[36]

The foregoing analysis may be summed up as follows: The modern opposition to territorial conquests and annexations and to the use abroad of colored colonial troops, together with the modern practice of condominium, the ideal of self-determination, and the policy of the open door in colonial territory, as embodied in the Roosevelt-Root mandate plan for Morocco under the Act of Algeciras of 1906, converged, through the writings of the Round Table group in England in 1915–1917 (especially Hobson), in the mind of General Smuts in 1917–1918, were then and there reënforced by the Wilson principles for the peace settlement, cast into the terminology of the mandate and formulated in the Smuts "Suggestions" on 16 December, 1918. From here they were taken up by President Wilson, and, by decisions of the Supreme Council, the Commission on the League of Nations, and the Peace Conference itself, were written into Article XXII of the Covenant of the League and the Treaty of Versailles.

[36] It has been claimed that Wilson's Fourteen Points (of 8 January, 1918) were devised directly to meet a demand for a restatement of allied aims cabled on 3 January to Washington by American propagandists in Russia. The evidence is inconclusive and the claim has been denied by Mr. George Creel, who is alleged to have been in charge of the action in Washington. On the other hand, the internal evidence in the address of 8 January is strong: the Russian negotiations at Brest-Litovsk are made the occasion for the speech and the share of Russia in the settlement is given great prominence, being placed ahead of Belgium and all other territorial questions. It is almost certainly true that the address, even if composed in the main as early as 1 January, as Mr. Creel says, was strongly influenced by the Russian situation. See *The Nation* (New York), Vol. CXI, p. 30 (10 July, 1920); *Russian-American Relations*, New York, 1920, pp. 67–74. It may not be without point to note that the Fourteen Points also corresponded very closely to a Russian statement of peace aims made on 19 October, 1917; see Ross, E. A., *The Russian Bolshevik Revolution*, New York, 1920, Chap. XXIV.

BRITISH FOREIGN POLICY AND THE DOMINIONS

ALFRED L. P. DENNIS

Important changes in the direction and conduct of British foreign policy have been taking place before our very eyes. The long traditions and the omnipotence of Downing Street in diplomatic affairs have received a challenge; for today the self-governing dominions and India are taking a new part in British foreign policy and are requiring for themselves a larger share in decisions of imperial importance. Not content with such claim to partnership in foreign affairs Canada has received the right to separate diplomatic representation at Washington; and soon we may welcome a Canadian minister, who at the British embassy will rank second only to the ambassador himself. Furthermore in view of recent events as to Ireland it is by no means impossible that, as the Irish Free State takes up its new position as a dominion, an Irish minister from Dublin may present his legal credentials at our department of state. India also has a new government in the making; and as she travels toward dominion status her importance in foreign affairs is growing year by year.

Such changes in the foreign relations of the British Empire are vital to the United States, for that vast and scattered domain is of more importance to us than any other foreign power in the world. We used to be part of it; and today nearly half of our total foreign commerce is with the British Empire. About 46 per cent of our exports go to the various parts of that empire; and nearly 43 per cent of our total imports are shipped to us from British ports. In 1919–20 we sent to the United Kingdom alone goods worth more than two billion dollars; yet of imports from the British Empire more than three-quarters came not from Great Britain but from other parts of the empire. In other words, if we reckon shipping, finance, and trade of all

sorts more than half of our ordinary business with the rest of the world is done with the British and this not merely in England but in every part of the earth.[1]

Demonstration of changes in British diplomacy were clear enough at the Washington conference. Representatives of British self-governing dominions and of India were present as full members of the British Empire delegation and as representatives of their own separate governments. They signed the treaties which they had helped to negotiate and which were subject to ratification by their parliaments as well as by our Senate. Indeed one of these treaties—the Four Power Treaty which ends the Anglo-Japanese Alliance—is largely due to the problem presented by the interests of British dominions; and the history of that alliance is closely linked with these changes in the control of British foreign policy.

In fact armament and Far Eastern questions had already been the subject of another conference which met in London in June, 1921. That meeting included premiers and representatives of governments wholly within the British Empire; but it was practically adjourned in August till the results of the Washington conference could be known. Thus it appeals to our American imagination that in this fashion affairs of the British Empire crossed the ocean for settlement in the United States. It is high time, therefore, that we realized not only that our annual imports from Canada are larger than those from the United Kingdom but that in 1921 it was a Canadian representative at London who objected to the renewal of the Anglo-Japanese Alliance and who, in one sense, helped us and forced the way to a direct consideration of the Far Eastern situation at the Washington conference.

President Harding's invitation to the Conference on Limitation of Armament and Pacific and Far Eastern Questions thus gave impetus to influences which were already at work within the British Empire and gave opportunity for consideration and decision as to policies which will have effect far into the future.

[1] *Statesman's Year Book, 1921.* Cf. Foster: "Canada and the United States" in *North American Review* vol. 216, pp. 1–10, (July 1922).

However important these recent sessions may be in international affairs, whatever influence the limitation of armament may have on the progress of peace, the Washington conference has now also become a part of both American and British history. The presence of dominion representatives at the Paris conference was largely due to the World War. Their participation at Washington set a precedent in time of peace and their attendance at the Genoa conference followed as a matter of course.

So in the first place we may ask why are the British dominions and India now represented at international conferences? What is their position within the empire as regards foreign policy? Why was the call of the Washington conference so significant both for the dominions and for the British Empire as a whole? And what is the meaning and importance of such events to the United States?

These questions touch matters both complicated and controversial; but if we work back from the Washington conference the fundamental issues may be clearer. When the United States invited the British to come to the conference the invitation was sent to the Foreign Office at London. The Foreign Secretary accepted and added that Great Britain would send a delegation representative of the empire as well as of the United Kingdom. In this British Empire delegation were included representatives of Canada, Australia, New Zealand, and India who appeared both for the empire as a whole and for their respective local governments. South Africa did not send a special member of the delegation because of annoyance that a separate diplomatic invitation from Washington had not been extended. Indeed by confidential cables the South African government tried to persuade other dominions to join in a refusal to attend the Washington conference unless the special position of each dominion were recognized by such a separate invitation. This extreme nationalism or separatism on the part of General Smuts did not receive support in the other dominions, and the correct diplomatic unity of the empire was preserved. Indeed power was finally given to Mr. Balfour to sign the treaties for South Africa.

This whole matter of the relations of the colonies to the mother country has been developing very fast. It is barely seventy-five years since responsible government began in rather casual fashion in Canada; only fifty-five years have passed since a federal system was given to Canada as a whole; the Commonwealth of Australia dates only from 1901 and the Union of South Africa, from 1910. Indeed less than fifty years ago there was common talk of the rapid disintegration of the empire. However, after 1870 an imperial reaction set in, and instead of the colonies clinging to the mother country we find in the last two decades of the last century a cautious movement in England seeking to strengthen the imperial connection. This endeavor took form in the discussion of plans for imperial federation. Yet it is one of the ironies of the situation that, when the federationists gained the calling of a colonial conference at the celebration of Queen Victoria's jubilee in 1887, care was taken "to exclude from the agenda 'what is known as Political Federation';" nor has federation apparently any better chance of success today.[2]

Other meetings followed this jubilee conference, and in 1907 the name Imperial Conference was first adopted. Then plans were made to have a similar gathering every four years of the prime ministers of the self-governing dominions under the prime minister of the United Kingdom to discuss questions of common interest to these governments, provision was also made for "subsidiary conferences" to be called whenever necessary or to deal with particular subjects. As the result of this decision a conference on defense met in 1909 and later the dominion representatives in the Imperial Conference, which met in 1911, sat also in meetings of the committee on imperial defense. This separate body had been first organized in 1904 directly under the British prime minister. Its composition was elastic and often included the cabinet ministers charged with naval, military, financial, foreign, and colonial affairs. In 1911 when the Imperial Conference was in session the dominion premiers were invited also to attend meetings of the committee on imperial defense.[3]

[2] *Proceedings of the Colonial Conference of 1887*, p. VIII.

[3] Cf. Hall: *British Commonwealth of Nations*. London, 1920. Ch. V.

By this step the dominions were brought "in touch with foreign affairs in their bearing on defense problems" for the empire as a whole. Indeed this meeting in 1911 was one of the direct causes of dominion participation in the international conference at Washington in 1921; for it was at the meetings of the imperial defense committee in 1911 that the last renewal of the Anglo-Japanese Alliance was first discussed by the dominion premiers. At this time also Sir Edward Grey (later Lord Grey of Falloden), who was then foreign secretary, made for the first time a complete and confidential report, for the benefit of the dominion prime ministers, on the international position and foreign policies of Great Britain.[4] This was a great innovation; and I well remember the delight expressed in London at that time by dominion representatives at the fashion in which they were met by Sir Edward Grey and at the frank way in which the relation of British foreign policy to imperial questions was discussed before them. The results of these new ideas and methods in Downing Street were of course seen later in the splendid rally of the dominions to the support of England on the outbreak of the World War in 1914. For all of these reasons 1911 is the starting point of many present tendencies in British imperial and international relations.

The conference of 1911 was also important because the entire problem of the part of the dominions in British foreign policy was raised almost for the first time. Other efforts to bring this about had largely failed; now the matter took more definite shape. This, however, did not lead to decisions which clearly and promptly altered the general practice of international relations or which brought about agreement as to the status and functions of the dominions in foreign affairs and policy. Thus, Mr. Asquith, who was then Prime Minister, was at pains to oppose anything like a permanent imperial advisory council because it might destroy the authority of the British government in foreign policy.[5] In other words, London was not "turning over" foreign affairs to Ottawa or Melbourne though, in

[4] *Proceedings of the Imperial Conference 1911*, p. 440.
[5] *Ibid*, p. 70.

point of fact, by the very frankness and liberality of the information offered to the dominion governments the home authorities had quickened understanding within the empire and enlisted support for the problems and policies of Downing Street.

On the other hand, Sir Wilfred Laurier, then prime minister of Canada, had declared for Canadians: "We are a nation—We have practical control of our foreign relations;" and in this he referred primarily to relations with the United States. Sir Robert Borden, who succeeded Laurier, and who was to be a member of the British delegation both at the Paris and Washington conferences, said before the Canadian House of Commons in 1912: "When Great Britain no longer assumes sole responsibility for defense upon the high seas, she can no longer undertake to assume sole responsibility for and sole control of foreign policy." He repeatedly maintained that on this basis the dominions sharing in defense "must necessarily be entitled also to share in the responsibility for and in the control of foreign policy" for the empire as a whole. Thus the entire matter of the power of the dominions in foreign affairs remained a subject of debate.

Later Sir Robert Borden in his lectures before the University of Toronto in 1920 summarized the situation as follows: "New and convenient methods of consultation had been established through periodical conferences, in which at first the Dominions were regarded as subordinate dependencies attached to a department of the British Government, but in which they eventually took their place as sister nations upon equal terms with the United Kingdom. The Dominions were originally included in commercial treaties without much regard for their wishes or interests. Eventually no such treaty bound them except by the expressed consent of their Governments. At first Canada was told somewhat brusquely that no Canadian Commissioner could take part in the negotiation of a treaty affecting his country; in the end by 1914 Canada freely negotiated her own commercial treaties by her own commissioners without control or interference except of a formal character. Canadians acting as British agents represented the interests of Canada and the

whole Empire in the Behring Seas and Alaskan Boundary arbitrations. . . . . Canada's right to a voice in foreign policy began to be recognized. Her complete control over her policy in respect of military and naval defense was acknowledged. By these sure steps, Canada is steadily mounting to the stately portal of nationhood."[6]

Three years after the Imperial Conference of 1911 came the World War; but the crowded years, 1914–18, do not directly concern us except as they gave in some ways a short cut to many things for which true liberal imperialists had long worked. In addition to their rights in the matter of commercial treaties dominions were now also to have a part in making political treaties for the empire as a whole. Yet this change was not the result of solemn constitutional conventions or of new laws; nor did it follow bitter conflict between the dominions and the mother country. The change came through war, but a war in which the dominions played their full part side by side with Great Britain. The young men of Canada, of Newfoundland, of Australia, of New Zealand, and of South Africa died for the unity and preservation of the empire. By their blood thus freely given they brought about a rapid evolution in the constitution of the British Empire and won for the dominions a new voice in British foreign policy and representation in the diplomacy of the world.

The pressure of the war had thus hurried matters for, while an imperial conference was meeting in London early in 1917, the dominion premiers had also been sitting with the British prime minister and other members of the British Cabinet in a newly organized Imperial War Cabinet to deal with affairs of common concern. Sir Robert Borden with classic clearness described the situation: "Ministers from six nations sit around

[6] For this and other quotations and for many suggestions I am greatly indebted to Sir Robert Borden who allowed me to read the manuscript of his lectures. Sir Arthur Willert of the British Foreign Office, Mr. Loring Christie of the department of external affairs, Canada, and Mr. E. L. Piesse of the prime minister's department, Australia, have also helped me greatly. But in many ways this article is based on personal observation and contacts during the past few years and I am responsible for all statements and interpretations.

the council board, all of them responsible to their respective parliaments and to the people of the countries which they represent. Each nation has its voice upon questions of common concern and highest importance as the deliberations proceed; each preserves unimpaired its perfect autonomy, its self-government, and the responsibility of its ministers to their own electorate."[7]

Meanwhile to the Imperial Conference came for the first time representatives of India appointed by the British government of India; for, by steps impossible to describe in this article, India was slowly advancing toward dominion status. This further innovation was, therefore, largely in anticipation of future events. It was due at this time to the gallant part played by Indian troops in the war and to the importance of the immigration question within the empire. This enlarged Imperial Conference of 1917 left a heavy mark on the constitution in its declaration regarding foreign policy. In connection with a proposal for a constitutional conference or convention, to be held after the war was over, the imperial conference also declared that any constitutional readjustment "should be based upon a full recognition of the dominions as autonomous nations of an imperial commonwealth, and of India as an important portion of the same and should recognize the right of the dominions and India to an adequate voice in foreign policy and in foreign relations. . . . "[8]

This constitutional conference has not yet met and no formal arrangement for the regular participation of the dominions in the direction of the foreign policy of the empire has yet been made. The influence of this resolution of 1917 has, however, been shown in the development of actual dominion coöperation in the international relations of the empire; and it also prepared the way for the attendance of dominion statesmen at Washington.

[7] From a speech on April 3, 1917, before the Empire Parliamentary Association (published as a separate pamphlet) and also quoted in *The War Cabinet Report* (1917), pp. 8–9. Cf. Hall; *op. cit.* and Keith: *War Government in the Dominions*, Oxford, 1921.

[8] *Proceedings of the Imperial War Cabinet*, p. 61.

In such fashion the Imperial War Cabinet, which was also called twice for long and frequent sessions in 1918, finally took form or was merged into the British Empire delegation which, as a diplomatic body, represented Great Britain and the empire at the Paris Peace Conference in 1919. This step was made easier by the fact that dominion prime ministers had been admitted to the Supreme War Council of the Allies and that, in England, after the armistice, they also took part in discussions as to peace terms.

Under the circumstances it was agreed at London in December, 1918, that the dominions and India should be represented as separate governments in the peace conference and that their representatives should also meet with the other English delegates as speaking and signing for the British Empire as a whole. To this final step there was some objection in Paris; but this change in the conduct of British foreign affairs withstood all criticism. Indeed when the Covenant of the League of Nations was framed the dominions and India were included as five individual states. As we can well recall this fact figured materially in the opposition in this country during 1919 to the Treaty of Versailles. In 1921 the government of the United States recognized and welcomed these dominion and Indian delegates as members of the British diplomatic unit at the Conference on the Limitation of Armament.

Such development, however, was so rapid that many might have expected that the course of events during the war and at Paris would be regarded as exceptional, as due to the heroic part played by the dominion troops in the common victory, or to special British pressure, and, therefore, as not in reality constituting a permanent change in international practice. It was scarcely reasonable to suppose that the British Foreign Office would at once surrender its proud position as the sole channel of international communication and representation not only for the United Kingdom but for all parts of the British Empire.

Furthermore the inclination of other states had to be considered. What would foreign governments say to this new turn of affairs? They had no diplomatic connections with the dominions and yet, if this practice were to continue, they would be

expected in the future, when occasion arose, to receive Canadian, Australian, New Zealand, South African, or Indian delegates not only as British diplomats but as representing separate local governments. Altogether the situation was almost without real precedent or perhaps beyond understanding or explanation. The titles of the King of England were many; now apparently he was not only a single royal head but a multiplication of monarchs, a sort of serial sovereign. Of course as far as Great Britain was concerned it was her own affair; she must settle her own domestic if imperial problems. Yet it was a bit difficult in a correct diplomatic world for foreigners to meet unexpectedly the representatives of the antipodes in the conclaves of the old world.

In some respects we Americans are quite ignorant regarding international affairs; we don't even know much about Canada, our next door neighbour; but it was perhaps a fortunate thing that after Paris the next great international conference should have been at Washington. To be sure, the dominions have been represented at Geneva in the League of Nations, where, by the way, more than one of them has voted against Great Britain; but after all the gathering at Washington was to rank as one of the historic international congresses. Certainly Americans are not afraid of new methods—we favor open diplomacy and rather enjoy diplomatic bombshells. We have a fellowship with youth; we were once part of the old British Empire ourselves; and we thought we could understand the point of view of the self-governing dominions better, perhaps, than some of the European nations. At all events our welcome to the dominions was not misplaced. We liked their dignity and their frankness; and at the end we felt that we wanted to know them better and longer.

There is, however, one more stage in the final progress of the British Empire delegation to the recent conference. After Paris what were the precise reasons why the dominions should so soon again appear in international affairs? Here is a vital link with the very origin, program, and performance of the Washington conference itself. At the same time we can recall the Imperial

Conference of 1911 and the fact that the Anglo-Japanese Alliance was then discussed by the British Foreign Office with the dominion prime ministers. The Anglo-Japanese treaties of 1902 and 1905 had not been submitted to the dominions; but, in connection with the problem of imperial defense in 1911, stock was taken of the entire international situation. Military and naval problems were linked and properly studied side by side with foreign policy; and the Anglo-Japanese Alliance was renewed in July, 1911, after such a coöperative survey on the part of the minister of the United Kingdom and of the dominions. Thus this alliance served as an introduction for the dominions to the field of "high politics." It was the first political treaty in which they had had a share by discussion and debate as to its renewal.

It was, therefore, only natural that the dominions should take part in any discussion of the continuance of the Anglo-Japanese Alliance in 1921. Consequently plans were suggested in October, 1920, for a special conference to be held at London. At first it appeared to be a renewal of the work of the Imperial War Cabinet, but the term "cabinet" was soon dropped. This meeting was not even an imperial conference in a hisorical and technical sense; it was a council of governments within the empire, a conference of prime ministers of the United Kingdom, of the dominions, and of representatives of India. In June, 1921, its immediate problem was the Anglo-Japanese treaty; yet in the meantime the United States had for some weeks been consulting informally with the allied powers as to the need of checking competition in armaments. This question therefore, was promptly connected with the situation in the Far East and the Pacific in the first meetings of the London conference. Debates in Parliament and discussion in the press had also served to associate these two matters.[9]

Mr. Hughes, the prime minister of Australia, was very frank for at the outset he proposed a conference of Great Britain,

[9] Cf. *Conference of Prime Ministers*, etc. *Summary of Proceedings and Documents* (1921); also (London) *Times*, April 28, 29, May 3, 7, 23, June 18, 19, and July 8, 1921, for useful comment.

America, and Japan regarding the Anglo-Japanese Alliance "to ascertain what might be mutually acceptable" and a second conference of the chief allied powers with the United States to discuss limitation of armaments. These were dominion proposals, and in his speech Mr. Hughes characteristically showed that he was not averse to the idea that to the dominions should come credit for settlement of matters of such great international importance.[10] Actually the plans which, after some uncertainty in view of a natural confusion at London, led to the acceptance of President Harding's invitation for a single conference to discuss both subjects at Washington were thus suggested in the London conference. In this way the dominions had an early share in the preliminaries of the meetings last winter.

Meanwhile the British Foreign Office is having sufficient opportunity to consider the effect of dominion coöperation and control in regard to international relations. In the text of the Anglo-French treaty which was proposed at Cannes early in January 1922, one article read: "The present treaty imposes no obligation whatever on any Dominion of the British Empire unless or until approved by the Dominion interested." The same stipulation as to the dominions was made in the (unratified) Anglo-French treaty of guarantee of 1919. This would imply that it might be possible for Great Britain to be involved in a European war in which the dominions need have no share.

The possibilities of such a situation are so varied and uncertain that we can only wait on the event. Certainly such an article is evidence of the influence of dominion criticisms of British foreign policy. Thus General Smuts said at the conference of prime ministers (1921): "It was impossible to continue entangled in the embroilments of Europe and the Empire should revert to the traditional policy of having no European entanglements." Of course, we must recall that South African nationalism is extreme; it resented the lack of a separate diplomatic invitation from the United States and at first even opposed the attendance of the dominions at Washington. But even Sir Robert Borden in October, 1920, commented on British foreign

[10] *Conference of Prime Ministers*, etc., pp. 20–21.

policy: "If the self-governing Dominions may not have adequate voice and influence in the direction of the Empire's foreign policy, it is not improbable that some of them will eventually have distinctive foreign policies of their own; and that may mean separation." And again: "To us in Canada it seems that the vision of Downing Street has been turned too much on Europe and the Near East, too little upon the vast possessions within our Empire."[11]

It is only natural, therefore, that the weight of tradition, the self-consciousness of the British Foreign Office, and the nearness of European elements should make London hesitant to surrender to the dominions more than is absolutely necessary. It is never easy for a great government department with a proud history to give up its monopoly of direction or to open its windows to winds from the Seven Seas. A divided and diffused authority is always difficult and is particularly awkward in international matters. The United States has found this true in such troublesome matters as California land laws and Japanese immigration. Furthermore "less than half a century had passed since the most commanding intellects in the statesmanship of Britain anticipated and even hoped for the disruption of the Empire. Of what consequence was half a continent in comparison with an English county?"[12] The very rapidity with which the voice of the dominions has won authority is itself almost a danger to the consolidation and development of this new position. Under these circumstances the fact of the Washington meeting at this precise period, in time of peace, without the urgency of immediate danger to produce groupings or decisions, is likely to be of great significance. Paris introduced a new element; Washington became a precedent; and the problem of the Anglo-Japanese Alliance may turn out to have served as an unexpected incitement to settlement of far larger matters in Anglo-American accord and in British imperial practice.

Still another phase of this general question arises in connection with the proposal to send to Washington a separate and

[11] *Marfleet Lectures* at University of Toronto.
[12] *Ibid.*

permanent Canadian diplomatic representative. This is not a new matter; it has been frequently raised during the past fifty years; and there are precedents for Canadian diplomats on numerous occasions. Negotiations begun before the World War finally led in 1920 to the arrangement, by authority of both the British and the Canadian governments, and with the approval of the United States, that the Crown should appoint to Washington on the advice of the Canadian cabinet of the day, a "Minister Plenipotentiary who will have charge of Canadian affairs and who will at all times be the ordinary channel of communication with the United States Government in matters of purely Canadian concern, acting upon instructions from and reporting direct to the Canadian Government. In the absence of the British Ambassador, the Canadian Minister will take charge of the whole Embassy and of the representation of Imperial as well as Canadian interests."

The "diplomatic unity of the Empire" is to be preserved; but anyone can see that such an arrangement is open to a variety of possible results. As a practical matter it is unquestionably a short cut, for today more than half of the daily business of the British embassy relates to Canadian affairs. Nevertheless in the course of involved and prolonged negotiations the interest of more than one part of the British Empire may be touched; and on occasion it might be that the United States would be in doubt as to with whom it was talking—Canada or Great Britain. International relations are rarely simple and unrelated. Furthermore diplomacy is a very human business; a great test of this new method would, therefore, lie with the degree of coöperation between the British ambassador and the Canadian minister; and the friendly understanding of the secretary of state would be essential.

We may also wonder whether eventually other British dominions may follow the example proposed by Canada, or if the system is to be extended to other countries. As yet it is uncertain as to whether we are to see an Irish minister at Washington; but the possibilities of such arrangements are interesting to say the least. In this speculation, however, it is important to note

that we are observing a constitutional development which is not yet completed. The dominions and India were represented at the Genoa conference. Even South Africa sent a representative; and, if the settlement of Irish affairs had permitted, it is very probable that the Free State would have made its official debut at that international gathering.

Nevertheless the real and steady influence and participation of the dominions in British foreign policy has not been finally measured. Discussion and assertion have at times gone beyond reality. There is as yet in the entire problem a certain lack of constitutional form and procedure. This is of course due in part to British methods of approach and of development. An anomaly is usually a necessary introduction to British constitutional progress. Moreover in the dominions there has been uncertainty and hesitation as to the degree of their influence and the character of their position in foreign relations. Public opinion is still in the making and until it has become more settled and uniform it would be a mistake to regard this whole movement as completed.[13]

[13] Thus the fine pioneer work by the group of men associated with the *Round Table* has at times been repudiated by many in the dominions. Mr. H. D. Hall in his admirable book, *The British Commonwealth of Nations*, went to the limit of practice and of opinion in 1920 in his claims for dominion participation and influence in British foreign policy. In 1921 at the time of the conference of prime ministers his series of articles published in the *Times*, under the title *Horizons of Empire*, crossed that limit. Later in the Melbourne *Argus*, during the Washington conference, his communications were probably considerably beyond general opinion in Australia. He was more "Australian" than the Australians. In New Zealand particularly opinion is often more "British" than in England. On this whole matter cf. Eggleston: "The Problem of the British Commonwealth," in *The Nineteenth Century and After*. Vol. 91, pp. 741–55 (May 1922); "A Programme for the British Commonwealth," in *Round Table* (March 1922); and Pollard: "The Dominions and Foreign Policy," *Proceedings of the Institute of International Affairs*, London, 1921.

The last report is that Prime Minister King of Canada is hesitating regarding the appointment of a Canadian minister at Washington. His government is none too stable; and he may decide to send only a Canadian commissioner to be a regular member of the British embassy staff. This might conciliate elements in Canada which are opposed to the plan of separate diplomatic representation. On the other hand many leaders of both the Liberal and Conservative parties are strongly in favor of the appointment of a minister. In Australia

Perhaps the most definite evidence of the influence of local opinion on imperial foreign policy that has come to the surface in a long time is found in the controversy connected with the resignation of the late secretary for India. Mr. Montague undertook to make public (in unconstitutional fashion) the opinion of native India with regard to British policy in the Near East. He was reprimanded by Mr. Lloyd George and lost his position in the Cabinet. Yet in the end of March, 1922 Lord Curzon as foreign secretary carried out at the allied conference at Paris the very policy which had been so strongly urged in India. Such a fact is more significant than mere representation of India at an international conference.

In any event as we observe the play of motive and the shift of opinion we can always realize the increasing mutual interest of the United States and of the British Empire. The methods followed by America and by England have often been different; but important changes in the internal constitution of the British Empire and in the direction of its foreign policies cannot fail to affect the United States. It is to our own continuing interest to watch with sympathetic understanding and friendly view the tangled imperial history which is now in the making.

Mr. Hughes has recently proposed the appointment of an Australian commissioner for Washington. So far this has not met with great favor. The truth seems to be that the dominions, while anxious to maintain the position gained during the war and in connection with the peace negotiations, are still uncertain as to the best method of doing so.

A UNIFIED FOREIGN SERVICE

SAMUEL MacCLINTOCK

Our government maintains a large and expensive foreign service. The business interests of the country recognize the value of adequate representation abroad and support vigorously measures intended to improve and expand this field. For the fiscal year 1922–23 Congress has increased the appropriations for this branch of the public service while cutting down almost all domestic expenditures.[1]

Our service in the foreign field has only one rival in its completeness and effectiveness, and that naturally is Great Britain's. Before the war comparison was often made with Germany, France, Japan and other nations, and critics could point to individual excellencies in all of these; but they in turn were generous in praise of our service and generally accorded it first rank, especially on its promotional side. The one outstanding weakness of this service at the present time is its lack of unity, resulting in duplicate activities, rivalries, uncertainties to those using the service and needless expense to the taxpayers.

In addition to the two major departments concerned with our foreign relations, there are also a number of other departments, bureaus or agencies of the government which have some foreign activities. Thus, the treasury department in the collection of customs; agriculture, in investigating foreign markets for its products; the bureau of immigration in enforcing its regulations; the war finance corporation in the financing of exports; and the federal reserve board in maintaining government banking connec-

[1] The appropriation for the bureau of foreign and domestic commerce alone for the year 1922–23 is $1,669,310 and is about 30 per cent larger than for the previous year.

tions abroad all are concerned to some degree with our foreign relations.[2]

On its political side the state department functions through its diplomatic service. Its ambassadors or ministers are accredited to all independent governments which have been recognized by our government. It lies outside the scope of this article to develop this aspect of our service. Suffice it to say that the ambassador or minister as head of the mission, ranks all other regularly appointed agents, and has, therefore, in theory at least, general supervision over all lesser officials of his own branch of the service.

The diplomatic agents have, in the past, confined their efforts largely to political and ceremonial activities, leaving to consular and other agents the development of commercial relations. There is a distinct tendency in recent times, however, for the diplomatic representatives to recognize the basic importance of commerce to political action. There is consequently a decided tendency to take a more active hand in studying business relationships and especially in supervising the work of our commercial representatives in their jurisdiction. Thus our ambassador to France not long ago called into conference all the American consular officials in that country for the purpose of discussing their problems and the best way to meet them. This is a hopeful step in the direction of greater unity in at least one branch of the foreign service.

Diplomatic representatives do not, however, ordinarily inform the department of current commercial movements and do not, therefore, present such facts in reports intended for the public. This is done, so far as the state department is concerned, by the consular officers.

The American consular service numbers some 700 members, all told, including all grades from consul general to student interpreter.[3] They cover every part of the world having Ameri-

[2] For dealing with the debts due us from the Allies a special commission was set up by Congress, composed of the secretaries of the treasury, state and commerce, as well as presidential appointees.

[3] In the spring of 1922 there were 202 American consuls in Europe, 85 in Asia, 23 in Africa, 33 in South America, 11 in Central America, 63 in North America, 23 in the West Indies, and 17 in Australasia.

can interests of any importance. Their work is both commercial and non-commercial. As instances of the latter may be mentioned their duties in connection with shipping, immigration, passport regulations, and in general looking after the interests of their nationals.

The commercial work of consuls is of large importance and embraces every aspect of advancing American interests. This means studying and reporting upon all phases of commercial activity and opportunities. Consular reports are often criticised on the ground of being too general, too broad, or too concerned with trivial details. Counting the shells on the seashore of a particular beach is humorously cited as an instance. Without attempting to weigh at length such criticisms let it be said in passing that consuls are general officers, charged with a multiplicity of duties, and cannot, therefore, reasonably be expected to be highly expert along any one line. This need not, however, preclude the service from having specialists, and as a matter of fact it does include quite a number of such experts at the present time, particularly in economic and financial matters.

Some three or four years ago the state department decided to organize a corps of economic experts, to be known as economist consuls. They were to be attached to the staffs of the larger consulates general in order to conduct or supervise the economic investigations in their districts. There are a number of these economist consuls in the service at the present time but the scheme does not seem to have worked well as a whole and is to be gradually abandoned, according to intimations now current.

The consular force throughout the world collects and transmits information upon practically every conceivable subject having any commercial bearing. These reports are both regular, or called for and occasional, or voluntary. Whether they are timely and valuable to our business interests depends both upon the aptitude of the consul and upon the directions and suggestions that he may receive from Washington. What is timely? What is valuable? To an executive interested in the broad, general aspects of economic movements within a country, the answer to these questions will be one thing; to a technical manager, con-

cerned primarily with a close, detailed knowledge of some particular phase of industry or commerce, the answer will necessarily be quite different. The executive wants a broad, but sound summary; the production or sales manager wants details, specifications, concrete instances. To criticise consular reports without bearing these points in mind is hardly fair.

Reports from its consuls pour into the state department in great volume. They are read in the regional divisions to which they pertain, and the commercial reports are then turned over to the department of commerce for publication, or other use. The state department is thus in the rather anomalous position of collecting commercial information through a great series of reports from its agents around the world but not itself making them public. It turns them over to the department of commerce to use or not, as it thinks best.

A few years ago there developed an important office in the state department—that of the foreign trade advisor. This office was created in order to keep our business interests advised concerning foreign situations of a business character, especially those of a financial nature. In order to work well a personnel different from that of either economist or consul would be required, also a more practical business direction. At any rate, it did not go well and has been greatly curtailed. The office is still maintained but with a skeleton staff, most of the work formerly projected for it having passed to the department of commerce.

The bureau of foreign and domestic commerce, of the department of commerce, is at present organized primarily to promote American trade abroad. The domestic side of the bureau has not been developed much, though Secretary Hoover is making significant gestures in this direction, especially in the important conferences he has been holding with various business bodies. The *Monthly Survey of Current Business*, published jointly by the bureaus of census, standards, and commerce, is a concrete step in this direction.

In the spring of 1922, the foreign field organization of the bureau of foreign and domestic commerce consisted of 13 commercial attaches, 5 acting attaches, 27 general trade commis-

sioners, 13 assistant trade commissioners, and 5 special trade commissioners. It will be noted that this is but a small force in comparison with the consular field force.

Commercial attaches are located in the principal commercial capitals of the world. They have a semi-attachment, of a somewhat sublimated kind, to the diplomatic mission, and are often housed in the embassy or legation. Thus they have diplomatic status, a matter of importance when it comes to dealing with the officials of foreign governments and otherwise acquiring sources of information.

The commercial attache does not report directly to the head of the mission and is not subject to the latter's supervision and direction. He reports directly to the department of commerce at home. In some places the relations between the diplomatic mission and the commercial attache are close and cordial, the former turning over to the latter practically all business of a commercial character, and the latter in turn informing the mission of all that takes place; in other places the relationship is decidedly remote. The two services have different origins, not to say purposes, and there is a strong feeling on the part of the older service that it is quite capable of handling all the work which needs to be done without the assistance of its rather aggressive junior partner.

A general trade commissioner is usually attached to the staff of the commercial attache, in case there is an attache in the country, but otherwise he reports directly to the home office. He is ordinarily assigned to the investigation of some particular trade line, but if there is no commercial attache in the country then the trade commissioner makes the broader and more general reports upon the economic and commercial conditions of the country as a whole.

Special trade commissioners are sent out by the bureau from time to time to make extensive investigations of some particular industry, trade, or development covering a wide area, perhaps a whole continent. Thus, in the spring of 1922, one special trade commissioner was investigating agricultural conditions in Europe; another the field for automotive products in the Far East;

another the possibility of selling American corn products in Europe; still another the field for industrial machinery; and a fifth was preparing a general handbook covering the commercial and industrial conditions in Mexico.

It has been found somewhat difficult to coördinate the work of these special trade commissioners, reporting usually to the home office direct, with that of the regular field force, so that the tendency is drop this feature and to supply this specialized type of investigation from the office of the resident commercial attache.

Some account is needed at this point of the internal organization of the bureau of foreign and domestic commerce before turning at greater length to the collection of information by the field force and its dissemination at home.

Until July 1921, the bureau was organized on the so-called territorial or regional basis. There are five of these divisions at present; namely, western European, eastern European, the near eastern, the far eastern, and the Latin American. Before this article is printed the near eastern will be merged into the eastern European, if recently announced plans are carried through.

These regional divisions share the direction of the field force, receive their reports, digest and prepare for publication those of most general interest. This means information of a broad general economic, financial, and commercial character, while that of a technical character, like tariffs, or of a commodity nature, like rubber, is passed over to the technical or commodity division concerned to handle. The regional divisions, then, that a year ago occupied the full field have now been relieved of all duties of a specialized commodity character and of all promotional work.

In the summer of 1921 an important development in the organization of the bureau took place when a number of commodity divisions were organized. These now include: agricultural implements, automotive products, electrical equipment, foodstuffs, fuel, iron and steel, lumber, industrial machinery, paper, rubber, shoes, hides and leather specialties, and boots, textiles, and sometimes transportation is included. Chemicals, finance and

investments will soon be added, as will experts in international cables and wireless communications; packing for export; and motorcycles.

The organization along commodity lines follows the British precedent of providing specialists who know the wants of their trades and act as coördinating factors between them and the government. Not only are they supposed to know just what their trades would like to have in the way of information from foreign countries but likewise they are expected to get this information out in the quickest and best way, and in the language of the trade itself.

On the whole this new organization plan is working reasonably well. Some industries, especially the highly organized ones with large foreign staffs of their own, have been indifferent and disinclined to coöperate, on the ground that they did not need any help and were not inclined to give any assistance to those outside their own membership; the unorganized industries, on the other hand, have presented even greater problems. So far as internal relationships are concerned it is difficult to have two parallel and coördinate organizations within the same bureau, one covering the field on a territorial basis and the other on a commodity basis. The line is not easy to draw between what is general and what is specific, what is economic and what is commodity; and needless to say the line is difficult to draw between many industries or commodity groups themselves. The direction of this phase of the bureau's work especially should be in the hands of those having some knowledge of business and some experience in executive work. Business men are rightly skeptical about spending time and money in coöperative efforts if the direction of these efforts is in the hands of young men having neither of these qualifications.

There are some in contact with this situation who frankly advocate abolishing the regional divisions entirely and substituting commodity divisions throughout. Others urge the maintenance of the regional divisions as the basis of the organization, with commodity experts crossing all territorial lines but subordinate, nevertheless, to the territorial organization.

In addition to both the regional and commodity divisions of the bureau there are also a number of others of importance. Thus there are the technical service divisions—tariffs, statistics, commercial laws, research, commercial intelligence, and (possibly) transportation; and the general administrative divisions, such as control the home and coöperative offices. The district offices of the bureau are maintained directly by the bureau in the following important home centers of foreign trade: Boston, New York, Chicago, New Orleans, San Francisco, St. Louis, Seattle, and Manila. The cost of their maintenance is about $100,000 a year. The coöperative offices are conducted in connection with local chambers of commerce, in about 24 less important centers. The purpose back of these local offices is to bring the work of the bureau quickly and effectively into touch with the business interests in each community that can make use of the informational service; also to stimulate interest in these big centers in our foreign trade. Such services as the bureau renders through its local offices is free to the public, and is used chiefly by importers and exporters, chambers of commerce, banks and schools.

A vast amount of information is collected by the government through its foreign representatives, both state and commerce, and poured into the bureau of foreign and domestic commerce for publication or other use. During the year 1921 American consuls thus turned in over 23,500 reports, while commercial attaches and trade commissioners turned in over 5,500. The consulate general in London alone sent in over 1,400.

Of the consular reports referred to, only a few more than 5000 were published in any form. Not all, by any means, were intended for publication or suited to publication, but many, on the other hand, did contain material of value to at least some portion of the public, and were collected and handled at considerable expense to the public. In a recent meeting of the managers of the local and coöperative offices pleas were made that these unpublished reports of interest to their constituents be made available to them for purposes of local consultation. Certain publishers likewise have asked that they be allowed to

abstract these unpublished reports for their magazines. The objection to complying with these requests lies in the expense of striking off an extra copy of the report, there usually being only two copies in the bureau and one in the department of state. It would seem only reasonable, however, to make larger use of these reports or else to discontinue their preparation. The fact that so many of them remain unpublished is said to have caused a widespread feeling of discouragement to spread over the consular force, resulting in a noticeable decrease in morale. Plans for using more of this material are said to have been worked out recently.

The principal forms in which the bureau of foreign and domestic commerce publishes its material are the following: *Commerce Reports*, a weekly magazine of some 50–70 pages; articles prepared for the daily press, some forty or fifty of which are using this material; informational bulletins prepared by the individual divisions and containing material too long or specialized for *Commerce Reports* but not suited, on the other hand, for publication as more permanent work; handbooks and monographs of a rather extended and ambitious nature; a *Monthly Summary of Foreign Commerce and Navigation; Trade of the United States with the World;* a *Statistical Abstract;* and a *Survey of Current Business*, published jointly with the bureau of the census and the bureau of standards.

The most serious fault of our foreign commercial service at the present time lies in the duplication and overlapping of functions in the foreign field. In each important capital of the world we maintain an ambassador or minister, a consul general, and in most of them either a commercial attache or trade commissioner, each office with a considerable staff. When it comes to investigating and reporting commercial movements and trade opportunities both state department and commerce department officials are there for exactly the same purpose. They may be very agreeable gentlemen, willing to coöperate, just as the home officers are; but, unfortunately, two foreign services, covering the same general field, make conflict inevitable. It is there by the very nature of the organizations set

up, and the best that the individuals can do is to make the scheme work with as little friction as is inevitable.

That duplication is unavoidable under this scheme may be seen from the following list of topics that commercial attaches are expected to report upon monthly by cable: the exchange situation; the financial situation; foreign trade commodity movements; stocks of imported merchandise on hands; stocks of exported commodities; import and export prices; building and construction; shipping conditions and movements; port conditions—oil and coal; crop conditions; immigration and emigration; labor and wages; activity in foreign and American branches and agencies; cost of living; railroads and railroad construction; concessions granted.

When a commercial attache has covered this wide range of subjects it looks as if a consul stationed at the same place and likewise under instructions to cover everything of importance would have but lean pickings, unless he can beat the other representative to it. From a certain city in central Europe there came in a given period 12 reports from the consul general and 15 from the trade commissioner covering the same subjects. That there are at times unseemly scrambles between members of the two services is an open and regrettable secret.

Officers of the services sometimes get together and attempt to divide the local field between them so as to avoid as much duplication as possible. In one of the important European capitals the following division was recently agreed upon: finances, industry, agriculture, mines and mining, labor, and foreign trade were divided; taxation, transportation, and commodity prices went to the consul general; other prices to the commercial attache; laws and regulations to the consul general, except cables which went to the commercial attache.

The field of private finances was thus divided: banking—increases of capital stock, bank statements, bank rates, new banks, and failures all went to the commercial attache; stock exchanges—shares dealt in, condition of the market, new flotations—went to the consul general; foreign investments in the country to the commercial attache; market prices of the country's securities

and foreign exchange quotations to the consul general; national finances to the consul general, except the budget, which went to the commercial attache.

Such an attempted division of the field shows a commendable effort on the part of the officers concerned to get together and avoid as much duplicate work as possible, but it also shows clearly on its face that the division agreed upon is personal, not topical; it is neither logical nor consistent, though like any other scheme it may work reasonably well as long as the individuals concerned are willing and anxious to coöperate. A fundamental division of the field by the departments at home is needed unless the working arrangements in the field are to be left to personal forces or blind chance.

The theory that both the department of state and the department of commerce should be free at all times to call upon their men for all the information they may need brings out clearly the character of the conflict between the two services, each seeking to cover the whole field and to be complete within itself. Such scope and purposes are by their very nature competitive.

Some important business organizations concerned with our foreign trade have given some study to this situation and one, at least, has made a proposed solution. It is that a commission be appointed by the President for the purpose of administering our foreign service in the interest of the public, both departments being subordinate to its direction. There is some precedent for such a scheme in the British procedure, but the difficulties involved in relieving the heads of the departments from the active direction of their departments are such as to make the proposal of doubtful acceptability.

That there is need of unity of control when it comes to contact with foreign officials, as well as with our own nationals, has been stated from time to time by responsible officials in charge of our foreign affairs. Thus, Secretary Hughes in addressing recently the United States Chamber of Commerce well said: "The effective intertwining of political and economic problems imposes a heavier strain upon the machinery and requires suitable readjustment, but the exigency requiring a unified system

of contact with foreign powers remains exactly the same. In truth many of our economic problems have now the feature that governments, directly or indirectly, are themselves more largely involved in economic projects, and economic problems must of necessity to a larger extent than before be taken up with governments through diplomatic channels. Unity of control of contact with foreign governments is absolutely essential."

From the point of view of the public there should be only one foreign service. It should not be organized in separate departments at all but simply as the one service of the United States government.[4] Business men should not be confused, as is true at present, with uncertainty as to which group of officers in a foreign country looks after certain interests, or is the source of information of a certain kind. The officers themselves should not be subject to the strain of attempting to work a system on a coöperative basis which is fundamentally competitive; and especially should the public be freed from the necessity of paying for duplicate organizations in the foreign field.[5]

[4] The Rogers Bill, of September 1, 1922, provides that all appointments shall be by commission to a class and not to any particular post, and that hereafter the diplomatic and consular services shall be known as the foreign service of the United States.

[5] While theoretically possible, practically the question as to why there should not be one central department in which would be combined all our foreign activities and interests, is never discussed. The Brown committee on the reorganization of government departments is said to contemplate shifting, combining or eliminating a number of bureaus and divisions, within the various departments as now organized, but has never considered, apparently, setting up a separate foreign department, or grouping all foreign activities within one of the existing departments. Perhaps the basic reasons for a continuance along present lines arises from the fact that, functionally, these activities are so dissimilar in character that throwing them together into one department would not create any closer organic relationship, or any better control. Some of these foreign activities are purely commercial and promotional; some are fiscal; some political. They are so wide apart in their fundamental character as to make grouping into a single department of very doubtful value, to say nothing of the difficulty of overcoming long established organization lines and procedure.

CONSTITUTIONAL LAW IN 1921–1922

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1921

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The central point of interest in the work of the court the past term is supplied by the large attention given to the question of the rights and duties of labor under the law. The problem is approached repeatedly, both from the side of the state's police power and that of national power, and in the field of statutory as well as that of constitutional construction. Important results were also reached in interpretation of the "commerce" clause, both in its aspect as a source of national power and in its aspect—because of the doctrine of the exclusiveness of the power of Congress—as a restriction on the states; but especially in the latter aspect. However, the most interesting single decision of the term for students of constitutional theory and of government was one dealing with the national power of taxation.

A. QUESTIONS OF NATIONAL POWER

I. NATIONAL TAXATION

1. The Child Labor Case

The case just referred to was that of Drexel Furniture Co. v. Bailey,[1] in which a nearly unanimous court held void the special tax levied by the Act of February 24, 1919, on the incomes of concerns employing child labor, on the ground that it was not intended to raise revenue but to regulate the employment of children, a matter otherwise reserved to the states. The opinion of the new Chief Justice is so revelatory of his constitutional creed that it deserves special attention.

Summarizing the provisions of the measure under review, the Chief Justice makes out a very convincing case for its regulatory inten-

[1] Decided May 15.

tion,[2] but his advantage is somewhat fortuitous, since a more drastic measure would have omitted most of the features he dwells upon, while in principle the act can by no means be considered as an extravagance even regarded as a purely revenue-raising measure. Concerns which

[2] "It [the act]," he writes, "provides a heavy exaction for a departure from a detailed and specified course of conduct in business. That course of business is that employers shall employ in mines and quarries, children of an age greater than sixteen years; in mills and factories, children of an age greater than fourteen years; and shall prevent children of less than sixteen years in mills and factories from working more than eight hours a day or six days in the week. If an employer departs from this prescribed course of business, he is to pay to the government one tenth of his entire net income in the business for a full year. The amount is not to be proportioned in any degree to the extent or frequency of the departures, but is to be paid by the employer in full measure whether he employs five hundred children for a year, or employs only one for a day. Moreover, if he does not know the child is within the named age limit, he is not to pay; that is to say it is only where he knowingly departs from the prescribed course that payment is to be exacted. Scienters are associated with penalties not with taxes. The employer's factory is to be subject to inspection at any time not only by the taxing officers of the Treasury, the Department normally charged with the collection of taxes, but also by the Secretary of Labor and his subordinates, whose normal function is the advancement and protection of the welfare of the workers. In the light of these features of the act, a court must be blind not to see that the so-called tax is imposed to stop the employment of children within the age limits prescribed. Its prohibitory and regulatory effect and purpose are palpable. All others can see and understand this. How can we properly shut our minds to it?"

And again: "Taxes are occasionally imposed in the discretion of the legislature on proper subjects with the primary motive of obtaining revenue from them, and with the incidental motive of discouraging them by making their continuance onerous. They do not lose their character as taxes because of the incidental motive. But there comes a time in the extension of the penalizing features of the so-called tax when it loses its character as such and becomes a mere penalty, with the characteristics of regulation and punishment. Such is the case in the law before us. Although Congress does not invalidate the contract of employment, or expressly declare that the employment within the mentioned ages is illegal, it does exhibit its intent practically to achieve the latter result by adopting the criteria of wrongdoing, and imposing its principal consequence on those who transgress its standard."

His contention, however, that, "Grant the validity of this law, and all that Congress would need to do hereafter, in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction of which the states have never parted with, and which are reserved to them by the Tenth Amendment, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called tax upon departures from it" cannot be conceded. See discussion of The Future Trading Act just below.

employ child labor occupy a degraded plane of competition and presumably enjoy special profits in consequence; why then, should not these profits be subject to special exactions by the taxing-power, whether national or local?

But what is far more important, the Chief Justice's evaluation of the purpose of the act does not touch the really serious difficulties in the way of holding it void merely because of that purpose. Precisely the same attack was made some years ago against the tax on yellow oleomargarine, and was characterized by the court, in the case of McCray v. United States,[3] as amounting to "the contention that under our constitutional system, the abuse by one department of government of its lawful powers is to be corrected by the abuse of its powers by another department." "The decisions of this Court," the opinion continued, "from the beginning lend no support whatever to the assumption that the judiciary may restrain the exercise of lawful power on the assumption that a wrongful purpose or motive has caused the power to be exerted."

The Chief Justice would fain distinguish the McCray and similar cases from the one at bar, but is unable to do so convincingly, since he is unable to deny that the regulatory purpose of Congress was fully as palpable in those cases as in this. Indeed, as his own references show, the court took cognizance of the regulatory purpose of the tax on state bank issues which was involved in Veazie v. Fenno,[4] but without suggesting that this at all affected the status of the measure as an excise. Nor should we overlook in this connection the most important chapter in the history of national taxation. Probably Congress has never enacted a customs revenue which did not contain whole schedules designed, not for raising revenue but for their regulatory effect; yet such duties have always been treated as "duties" in the sense of the Constitution, and as subject to the requirement that they be "uniform throughout the United States."[5] Then finally, the decision directly collides with Chief Justice Marshall's dictum in McCulloch v. Mary-

[3] 195 U. S. 27; and cases there cited.

[4] 8 Wall. 533. See, e.g. the court's remarks in Flint v. Stone Tracy Co., 220 U. S. 107.

[5] "The absolute power to levy taxes," says Story, "includes the power in every form in which it may be used, and for every purpose to which the legislature may choose to apply it. This results from the very nature of such an unrestricted power. *A fortiori* it might be applied by Congress to purposes for which nations have been accustomed to apply it." The entire paragraph should be read. *Commentaries*, § 965. For the opposing view, which was first formulated by the "tariff for revenue" school, see Cooley's *Principles of Constitutional Law* (3rd ed.), p. 58.

land,[6] which has since come to underly so much constitutional law, that "the power to tax involves the power to destroy"—that, in other words, the power to tax involves the power to regulate the subject-matter of the tax by taxing it even to the point of destroying it.

It may, therefore, be said of this decision, first, that it rests upon a view of the taxing power which had not hitherto found its way into constitutional law; and, secondly, that it infers a claim which the court had hitherto repudiated, of power on its part to overturn for alleged unconstitutional purpose acts of Congress otherwise valid. For the first time in the history of judicial review legislative motive is made a test of legislative action, and any effort by Congress to bring within its control matters normally falling to the states alone raises the question of valid motive.

But is it true that the Constitution intends any such apportionment of the purposes of government, as Chief Justice Taft assumes, between the national government and the states?[7] That the national government is, in peace time, so far as domestic affairs are concerned, mainly a government of enumerated powers, is of course axiomatic; but does that fact signify that it may not use the powers clearly belonging to it to promote the larger ends of good government everywhere? This very question was raised in an early case with reference to Congress's power over commerce, and answered by the court to which it was addressed as follows: this power "is not to be confined to the adoption of measures exclusively beneficial to commerce itself, or tending to its advantage; but in our national system, as in all modern sovereignties, it is also to be considered as an instrument for other motives of general policy and interest."[8] The same principle is implied for all of Congress's

[6] 4 Wheat. 316.

[7] That he does assume such an apportionment is proved by his quotation of the following passage from C. J. Marshall's opinion in McCulloch v. Md.: "Should Congress, in the execution of its powers, adopt measures which are prohibited by the Constitution, or should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the government, it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land."

The quotation is entirely misapplied. Marshall is here discussing the powers of Congress under the "necessary and proper" clause, and is saying that these must have some relation to its substantive powers; he is not suggesting that the latter were granted for only limited purposes.

[8] U. S. v. the Brigantine *William*, *Federal Cases*, No. 16,700. This is the famous "Embargo Case," and was decided, in 1808, by Judge John Davis of the United States district court of Massachusetts. "It was perceived," Judge Davis's opinion continues, "that, under the power to regulate commerce, Con-

powers in the Preamble itself; and indeed, was invoked by the court not many years since in sustaining the Mann White Slave Act.[9]

While, therefore, the decision in the Drexel case marks certain innovations upon our constitutional law, it also signalizes in one way a reaction, to wit, toward the older theory of a federal balance, in contradistinction to the modern one of federal coöperation,—a deduction which is confirmed by Chief Justice Taft's invocation of the Tenth Amendment. Yet other decisions at this same term, decisions in which the Chief Justice again speaks for the court, show conclusively that—as Madison phrased it—"interference with the powers of the states is no criterion of the powers of Congress."[10] There appears, in fact, to be something of a discrepancy between the court's reading of the Constitution when railway rates are concerned and its reading of the same instrument when child labor is concerned—which, however, becomes less surprising when we recall the difficulties which Congress also encountered in asserting its power in the former field at first.[11]

gress would be authorized to abridge it, in favor of the great principles of humanity and justice. Hence the . . . . clause, in the Constitution . . . . to interdict a prohibition of the slave trade, until 1808." Compare with these words the following passage from C. J. Taft's opinion, in comment on Hammer v. Dagenhart, 247 U. S. 251, in which the first Child Labor Act was set aside:

"The analogy of the Dagenhart case is clear. The congressional power over interstate commerce is, within its proper scope, just as complete and unlimited as the congressional power to tax; and the legislative motive in its exercise is just as free from judicial suspicion and inquiry. Yet when Congress threatened to stop interstate commerce in ordinary and necessary commodities, unobjectionable as subjects of transportation, and to deny the same to the people of a state, in order to coerce them into compliance with Congress's regulation of state concerns, the court said this was not in fact regulation of interstate commerce, but rather that of state concerns, and was invalid."

This is the clearest intimation that we have had that the Dagenhart case stands for the idea that Congress may regulate commerce only from the point of view of benefiting the commerce. See next note.

[9] Hoke v. U. S., 227 U. S. 308, where it is said: "Our dual form of government has its perplexities, state and nation having different spheres of jurisdiction, as we have said; but it must be kept in mind that we are one people; and the powers reserved to the states and those conferred on the nation are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral." See further note 85.

[10] *Annals of Congress*, II, col. 1891. See the discussion of the railway rate cases, *infra*.

[11] See, e.g., J. Harlan's statement in his dissenting opinion in the Alabama Midland Ry. case, 168 U. S. 176, that the court had rendered the interstate commerce commission "a useless body for all practical purposes." This was in 1898.

2. The Future Trading Act; Tax Penalties

At the same sitting the court also pronounced void, in Wallace v. Hill,[12] certain sections of the Future Trading Act of August 24, 1921, whereby Congress attempted a wholesale regulation of boards of trade through subjecting them to the supervision of the secretary of agriculture and an administrative tribunal consisting of that secretary, the secretary of commerce, and the attorney general, and imposed upon boards not coming under the control thus set up a special tax of twenty cents a bushel on all contracts for the sale of grain for future delivery. Inasmuch as the court found the act to transcend the powers of Congress under the commerce clause—a point about which, however, there is considerable room for debate—it properly concluded that the system of regulation created by the act was void and that the alternative tax fell with it. The Drexel case is cited as authority for the decision, but it is clear that the two cases hardly occupy a common footing. In the one the only regulation involved was such as would result from the tax imposed; in the other detailed regulations were directly enacted or authorized which were to be alternative to the tax; in the one, an act of Congress, otherwise valid, was banned for a supposed purpose, in the other for its actual content.[13]

A third case, Lipke v. Lederer,[14] involved section 35 of the Volstead Act, which provided that where there was "evidence" of illegal manufacture or sale of liquor, against "the person responsible" should be assessed "a tax" double the amount provided by law previous to the passage of the act, together "with an additional penalty of five hundred dollars on retail dealers," etc. This section was held to impose a penalty in the guise of a tax, without trial by jury or due process of law and so to be void. While there is probably no rule of constitutional law which requires that taxes must proceed from a benevolent or approving frame of mind toward businesses taxed, for the government to

[12] Decided May 15.

[13] It may be argued perhaps that by the scheme of the Future Trading Act immunity from regulation was exchanged for immunity from taxation. Undoubtedly, certain constitutional rights and immunities may be waived by the individual, but not those, it is submitted, which are incidental to the maintenance of the structure of the government and the distribution of powers effected by the Constitution, for in such cases the individual right is only a resultant of something more fundamental. In this connection compare two cases decided this term of court: Terral v. Burke Construction Co., discussed *infra*, under B., III, and Pierce Oil Corp. v. Phoenix Refining Co. (May 15).

[14] Decided June 5.

derive revenue from a business which is outlawed would be a strange proceeding, to be sure—about as strange as for it to engage in the same business on the high seas. The decision seems well grounded.

3. Income and Estate Taxes

Two cases arose under the Sixteenth Amendment. In one the court extended the benefits of the decision in Eisner v. Macomber[15] to the proceeds of a sale by a stockholder of his preferential right to participation in a stock-dividend;[16] in the other it refused to do so, in the case of stock which was issued in a new corporation against the accumulated surplus of a pre-existing one, and was distributed in pursuance of a plan of reorganization *pro rata* among the stockholders of the latter.[17] The distinction between the two cases is somewhat difficult to grasp.

Another case informs us that the Estate Tax of September 8, 1916, may reach, as part of the net value of an estate, state and municipal bonds;[18] while a third vindicates the right of Congress to tax persons and property within the District of Columbia in defiance of the maxim that "taxation without representation is tyranny."[19]

II. REGULATION OF COMMERCE

1. The Railway Rate Cases

Several years ago, in the Shreveport case,[20] the Supreme Court sustained the right of the interstate commerce commission to order an increase of certain intrastate rates in Texas which, though they had been authorized by the state railway commission, were found to discriminate against persons and localities engaged in interstate commerce;

[15] 252 U. S. 189; discussed in this *Review*, XVI, p. 635 ff.

[16] Miles v. Safe Deposit and T. Co. (May 29).

[17] U. S. v. Phellis (Nov. 21); also, Rockefeller v. U. S., which was decided the same day, and in which the facts were substantially the same. J. J. McReynolds and Van Devanter dissented, on the basis of Eisner v. Macomber.

[18] Greiner v. Lewellyn (Apr. 10). In differentiating the case from a tax on income derived from state and municipal bonds, J. Brandeis speaks of the latter as "a direct tax," which flies directly in the face of what was said in the Brushaber case, 240 U. S. 1.

[19] Heald v. D. C. (May 15): "There is no constitutional provision which so limits the power of Congress that taxes can be imposed only on those who have political representatives." A series of cases, decided May 1st, rule that the Estate Tax of 1916 does not extend to trusts created before its passage.

[20] 234 U. S. 342.

and in doing so the court laid down the following principle: "Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress and not the state that is entitled to prescribe the final and dominant rule." Relying on this rule, which is an obvious deduction from the "commerce" clause read in connection with the "necessary and proper" clause, Congress, by section 416 of the Transportation Act of 1920, authorized the commission generally to remove "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce," in pursuance whereof the commission presently followed an order increasing interstate passenger and freight rates with one—among others—fixing the minimum passenger rate in Wisconsin at 3.6 cents per mile; and this notwithstanding that a state statute set the maximum fare for passengers in that state at two cents per mile.

In the case of the Railroad Commission of Wisconsin v. C. B. & Q. R. R. Co.[21] the validity of this order was assailed, not only by Wisconsin but also twenty other states, whose attorneys general filed briefs as *amici curiæ*, but all to no avail. In New York v. United States[22] the same result was reached with regard to similar orders affecting rates of transportation within that state, and the further point was established, again upon ample authority,that the power of the interstate commerce commission is in no wise limited by the existing charter obligations of carriers subject to its jurisdiction. On the other hand, in Texas v. Eastern Texas Ry. Co.,[23] an order of the commission authorizing the company to discontinue its purely intrastate business was overruled on the ground that, since the road lay wholly within the state and was not part of another line, its continued operation could not be of more than local concern. Whether, apart from the commission's order, the company was entitled to abandon as unprofitable a service which it had undertaken in its charter to perform, was not decided.[24]

2. National Regulation of Stockyards

Stafford v. Wallace[25] sustains the Packers and Stockyards Act of August 15, 1921, by which Congress authorized the secretary of

[21] Decided Feb. 27.
[22] Same date.
[23] Decided Mar. 13.
[24] Cf. Brooks-Scanlon Co. v. R.R. Comm., 251 U. S. 396, and Bullock v. R.R. Comm., 254 U. S. 513.
[25] Decided May 1.

agriculture to regulate rates and charges of the Chicago packers with a view to preventing unfair practices, monopoly, control of prices, etc. Reciting the conceded fact that "of all the live stock coming into the Chicago stockyards and going out, only a small percentage, less than 10 per cent, is shipped from or into Illinois," the Chief Justice said: "Stockyards are not a place of rest or final destination;" they "are but a throat through which the current flows, and the transactions which occur therein are only incidental to this current from the West to the East and from one state to another." The act thus falls well within accepted principles[26]—notwithstanding which Justice McReynolds dissented.

III. GOVERNMENT OF TERRITORIES

Two cases arose under this heading. One informs us that the word "state" as used in the "no preference" clause of Article I, section 9 of the Constitution does not include "incorporated" and "organized" territories such as Alaska;[27] the other, that the act of Congress extending citizenship to the inhabitants of Porto Rico did not make that island an "incorporated" territory to which, by previous decisions of the court, the provisions of the Sixth Amendment with reference to trial by jury are applicable.[28] In short, just how a territory becomes "incorporated" and what results from the metamorphosis in the way of constitutional guaranties are still unanswered questions.

IV. THE CONSTITUTION-AMENDING POWER

In Leser v. Garnett,[29] a case coming up from Maryland, the recently adopted Nineteenth Amendment was assailed as destroying that state's autonomy by effecting a great addition to its electorate without its consent. A unanimous court answered through Justice Brandeis that the Amendment "is in character and phraseology precisely similar to

[26] The decision does not, in fact, go beyond Swift & Co. v. U. S., 196 U. S. 375, where certain practices of the great packers were condemned under the Sherman Act. The principle involved is indicated by the caveat quoted from the opinion in U. S. v. Ferger, 250 U. S. 199, that it is a mistake to assume "that the power of Congress is to be necessarily tested by the intrinsic existence of commerce in the particular subject dealt with, instead of by relation of that subject to commerce and its effect upon it."

[27] Alaska v. Troy (Feb. 27).

[28] Balzac v. P. R. (Apr. 10).

[29] Decided Feb. 27.

the Fifteenth Amendment," that the same method of adoption was pursued for each, and that the validity of the Fifteenth Amendment had been "recognized and acted on for half a century" and was no longer open to question. A second contention that certain provisions in the constitutions of some of the states listed by the secretary of state as having ratified the Nineteenth Amendment rendered the alleged ratifications inoperative was answered by reference to Hawke v. Smith[30] and the proposition there established that the function of a state legislature in ratifying a proposed amendment to the national Constitution, being derived from the Constitution itself, "transcends any limitations sought to be imposed by the people of a state." However, it was further argued that, at any rate, the legislatures must act as legislatures, and so in accordance with their rules of procedure and that this had not been done in all of the states. The court, following a familiar rule,[31] refused to go into the question. Inasmuch, it said, "as the legislatures of Tennessee and West Virginia"—the two states concerned—"had power to adopt resolutions of ratification, official notice to the secretary, duly authenticated, that they had done so, was conclusive upon him, and being certified to by his proclamation, is conclusive on the courts."—In view of all which, future assaults on regularly adopted constitutional amendments seem unlikely.

V. EXECUTIVE POWER

1. The Power of Removal

Light—some of it familiar—was shed on the power of removal by a number of cases. An order of the President cannot reinstate a person in office where the power of appointment and removal is vested by statute in the secretary of the treasury, but can only restore him to eligibility for reappointment.[32] The power to remove is included in the power to appoint where the latter is conferred by statute and the statute does not otherwise provide.[33] Statutes, however, which limit the President's power to dismiss officers from the army and navy do not affect his power to remove such officers when it is exercised by and with the advice and consent of the Senate, and such advice and consent is given

[30] 253 U. S. 221 and 231.

[31] See in this connection Haire v. Rice, 204 U. S. 291; also Marshall Field & Co. v. Clark, 143 U. S., 649, and cases there cited.

[32] Eberlein v. U. S. (Nov. 7).

[33] Norris v. U. S. (Nov. 7).

when the Senate ratifies a nomination to the vacated post.[34] Furthermore, the Senate, in confirming an appointment, is exercising not a judicial but an executive function, wherefore it is free to accept a nomination by the President as assurance that a vacancy existed to which an appointment could be validly made.[35]

2. Miscellaneous

Various other phases of "executive power" also received illustration. In Ponzi v. Fessenden[36] it was held that the attorney general had the right, even though without express statutory authorization, to consent to the temporary transfer of a federal prisoner from his place of confinement to a state court, there to give testimony. "In such matters," said the court, "he represents the United States and may, on its part, practice the comity which the harmonious and effective operation of both systems of courts requires." The decision is based on *in re* Neagle.[37] Another case invokes the principle that authority vested in the President by Congress may be delegated by him to the head of the proper executive department, and when exercised by latter is in contemplation of the law exercised by the President.[38] In a third case certain regulations by the secretary of the treasury were set aside as not in accordance with law.[39]

VI. JUDICIAL POWER

1. General Attributes

In Howat v. Kansas,[40] a recalcitrant labor chief who had been proceeding on the assumption that every man is his own supreme court, was informed that a decision of a state court which sustained contempt proceedings for the violation of an injunction was not reviewable by the United States Supreme Court, on the ground that the statute under

[34] Wallace v. U. S. (Feb. 27).

[35] Same parties (Apr. 10).

[36] Decided Mar. 27.

[37] 135 U. S. 1.

[38] U. S. v. Weeks (May 29). The leading cases are Wilcox v. Jackson, 13 Pet. 498, and Williams v. U. S., 1 How. 290.

[39] International R'y. Co. v. Davidson (Jan. 30). A leading case in this connection is Morrill v. Jones, 106 U. S. 466. Kern River Co. v. U. S. (Nov. 21), emphasizes the respect to be paid a construction put upon a statute "by the head of the Department charged with administering it."

[40] Two cases, decided Mar. 13. Compare Union Tool Co. v. Wilson (May 15).

which the injunction had issued violated the Constitution; if an injunction is erroneous, the error can be tested only by appeal from it, not by violation of it. Thus the court lost the opportunity for the time being of passing upon the Kansas Industrial Relations Court Act. Although the decision was ostensibly in interpretation of section 237 of the Judicial Code, its real basis seems rather to be the idea that judicial power carries with it power on the part of courts to punish contempt of their processes.

Conversely, Fairchild v. Hughes[41] is instructive of certain intrinsic limitations to judicial power. It tells us that the right which we enjoy as good citizens to require that the government be administered according to the law does not of itself entitle us to start proceedings in the federal courts for the purpose of obtaining a judicial decision as to the constitutionality of a pending statute or constitutional amendment. Or, as it was phrased in another case, "It is only when rights, in themselves appropriate subjects of judicial cognizance, are being, or about to be, affected prejudicially by the application or enforcement of a statute, that its validity may be called in question by a suitor and determined by an exertion of the judicial power."[42]

2. Immunity; Maritime Jurisdiction

Three cases illustrated the original jurisdiction of the Supreme Court in controversies between states—two of them boundary disputes[43] and the other a dispute over water rights.[44] In two cases, however, states which sought the intervention of the court against orders of the interstate commerce commission were informed that they must resort to the proper United States district court, since the national government, which is by statute made a necessary party to such suits, had consented to be sued only in such court.[45]

But if the government itself is immune from suit except when it consents thereto, how about its corporate agents? As the United States Shipping Board Emergency Fleet Corporation learned to its cost, they occupy precisely the same footing as personal agents in this regard.[46] The contrary notion, said Justice Holmes, speaking for the

[41] Decided Feb. 27.

[42] Texas v. I. C. C. (Mar. 6). See also Muskrat v. U. S. 219 U. S. 346.

[43] Georgia v. S. C. (Jan. 30), and Oklahoma v. Tex. (May 1).

[44] Wyoming v. Colo. (June 5).

[45] North Dakota v. Chic. & N. W. R'y Co. (Jan. 23) and Texas v. I. C. C. (Mar. 6).

[46] Sloan Shipyards Corp. v. U. S. S., Bd. E. F. Corp. (May 1).

court, would be "a very dangerous departure from one of the first principles of our system of law." The sovereign is superior to suit, "but the agent because he is agent does not cease to be answerable for his acts."[47] To property used by it, on the other hand, the government can impart its immunity; wherefore, no action *in rem* lies against a vessel after release by the United States for a tort committed while in its service.[48]

Several cases prove that the rule laid down in Knickerbocker Ice Co. v. Stewart[49] is not to be enforced literally, but is to be mitigated by the inquiry in each instance whether the operation of a state law within the field of the admiralty jurisdiction would "work material prejudice to the characteristic features of the general maritime law."[50]

VII. FREEDOM OF PRESS; FRAUD ORDERS

In Leach v. Carlile[51] the court sustained a "fraud order" of the postmaster general against the vendor of a panacea called "Organo Tablets," which were advertised as "recommended and prescribed by leading physicians throughout the civilized world for nervous weakness, general debility . . . . sleeplessness, run-down system," and all the rest of it. Justice Holmes, in a dissenting opinion, concurred in by Justice Brandeis, gallantly shivered another lance for his beloved freedom of speech and press, admitting inferentially, however, that he had been somewhat remiss in the past where cases like the one at bar had been concerned. "I do not suppose," said he, "that anyone would say that freedom of written speech is less protected by the First Amendment than the freedom of spoken words. Therefore I cannot understand by what authority Congress undertakes to authorize anyone to determine in advance . . . . that certain words shall not be uttered." But the words involved in this case were uttered in advance of any official action and many times, nor was the utterer penalized merely for that; and that there is a difference between spoken and written words sometimes is shown by the law of libel. Also, it may be suggested, that when

[47] Citing Osborn v. Bank of U. S., 9 Wheat 738, and United States v. Lee, 106 U. S. 196.

[48] United States v. Thompson (Jan. 3). J. McKenna, speaking for himself and J. J. Day and Clarke in dissent, has much the better argument from authority. See *The Siren*, 7 Wall. 152.

[49] 253 U. S. 149; see also Southern Pacific R'y Co. v. Jensen, 244 U. S. 205.

[50] Western Fuel Co. v. Garcia (Dec. 5), followed by Grant Smith-Porter Ship Co. v. Rhode (Jan. 3), and State Industrial Comm. v. Nordenholt Corp. (May 29).

[51] Decided Feb. 27.

one tries to coin his freedom of utterance into dollars and cents by addressing himself directly to the credulity of his fellows, he may rightly be subjected to a special scrutiny, freedom of utterance being designed primarily for the public benefit and as an aid in the processes of popular government.

VIII. THE FIFTH AMENDMENT; CHINESE

Much the most important case in this connection was that of Ng. Fung Ho v. White,[52] where the rule is laid down that Chinese residents within the United States who assert a claim of citizenship supported by evidence sufficient, if believed, to sustain it, may not be deported by executive order, but are entitled by due process of law to a judicial trial of this claim. The doctrine of the Ju Toy case[53] is thus confined to Chinese who are in legal contemplation without the borders of the United States and are seeking entry therein on the ground of citizenship.[54]

The punishment of a person for an act done in violation of the law when ignorant of the facts making it so is not necessarily a denial of "due process of law."[55] A crime punishable by hard labor is necessarily curious to relate, "an infamous crime," and one, therefore, which must be charged by indictment.[56] Property, the value of which has been substantially destroyed in consequence of the erection of public works, is ordinarily "taken," but where no human knowledge could have foreseen the destruction this rule does not apply.[57] When the government uses a patented article with the owner's consent, it is obliged to pay him "just compensation."[58]

[52] Decided May 29.

[53] United States v. Ju Toy, 198 U. S. 253.

[54] The position of such Chinese is akin to that of people of color who were arrested as fugitive slaves, before the Civil War. See Prigg v. Pa., 16 Pet. 539.

[55] United States v. Balint (Mar. 27).

[56] United States v. Moreland, decided Apr. 17. Moreland had been sentenced to the District of Columbia workhouse for six months at hard labor, his offence being failure to support his children. The statute under which he was convicted designated this offence a "misdemeanor." The decision seems to be based on a strained interpretation of Wong Wing v. U. S., 163 U. S. 228. J. Brandeis filed a dissenting opinion for himself, the Chief Justice, and J. Holmes.

[57] John Horstmann Co. v. U. S. (Nov. 21).

[58] United States v. Bethlehem Steel Co. (Apr. 10). The right of Congress to ratify an unauthorized collection of duties in certain circumstances was sustained in Rafferty v. Smith, Bell & Co. (Dec. 5). For a different result in closely parallel facts, see Forbes Pioneer Boat Line v. Bd. of Commrs. (Apr. 10).

IX. STATUTORY CONSTRUCTION

1. The Sherman and Clayton Acts and Labor

A decision of interest not only to students of the labor problem but also to those who have pondered the question of the nature of corporations, whether they are "real" or only fictions of the law, is that in United Mine Workers of America v. Coronado Coal Co.,[59] which yields the novel, not to say, revolutionary doctrine—so far as American law is concerned—that unincorporated labor unions are suable in their own names in the federal courts for their acts, and that their funds are subject to execution in actions for torts committed by their authorization during strikes. The decision is based both on the language of section 7 of the Sherman Act and on general grounds.[60] On this particular occasion the

[59] Decided June 5.

[60] "At common law," the opinion reads, "an unincorporated association of persons was not recognized as having any other character than a partnership in whatever was done, and it could only sue or be sued in the name of its members, and their liability had to be enforced against each member. . . . . But the growth and necessities of these great labor organizations have brought affirmative legal recognition of their existence and usefulness and provisions for their protection, which their members have found necessary. Their right to maintain strikes, when they do not violate law or the rights of others, has been declared. The embezzlement of funds by their officers has been especially denounced as a crime. The so-called union label, which is a quasi trademark to indicate the origin of manufactured product in union labor, has been protected against pirating and deceptive use by the statutes of many states, and in many states authority to sue to enjoin its use has been conferred on unions. They have been given distinct and separate representation and the right to appear to represent union interests in statutory arbitrations, and before official labor boards. . . . . More than this, equitable procedure adapting itself to modern needs has grown to recognize the need of representation by one person of many, too numerous to sue or be sued . . . . ; and this has had its influence upon the law side of litigation, so that, out of the very necessities of existing conditions and the utter impossibility of doing justice otherwise, the suable character of such an organization as this has come to be recognized in some jurisdictions, and many suits for and against labor unions are reported in which no question has been raised as to the right to treat them in their closely united action and functions as artificial persons, capable of suing and being sued. It would be unfortunate if an organization with as great power as this international union has in the raising of large funds and in directing the conduct of 400,000 members in carrying on, in a wide territory, industrial controversies and strikes, out of which so much unlawful injury to private rights is possible, could assemble its assets to be used therein free from liability for injuries by torts committed in the course of such strikes. To remand persons injured to a suit against each of the 400,000 members to recover damages and to levy on his share of the strike fund would be to leave them remediless." The Taff Vale decision is invoked; and a marginal note furnishes an extended reference to legislation by the states protective of labor unions.

national organization of miners was held not liable because it was not shown to have authorized the acts complained of by the coal company; and the local union was held to be exempt from suit in the federal courts because, on account of their local effect, the acts complained of did not interfere with interstate commerce; but it is inferred that if the strike had been called by the national organization its scope would have made any illegal acts connected with it violative of the Sherman Act, and further, that if the coal involved had been considerable enough in quantity to affect interstate prices, the local union could have been held under the act for any wrongful deeds. The case has great importance both as an interpretation of the national Anti-Trust Acts and as a hint to the state courts, when handling cases in which claims against labor organizations may be based on common law principles. If the suggestion is adopted, we shall soon hear, for example, of labor organizations being sued for procuring breaches of contract. It should be added that the decision, though a striking instance of judicial legislation, was rendered by a unanimous court.

Already, earlier in the term, the court had laid down, in American Steel Foundries v. Tri-City Central Trades Union Council,[61] certain important propositions supplementary to the decision last term in the Duplex case,[62] in interpretation of section 20 of the Clayton Act: (1) the "irreparable injury" for which injunctive relief is permitted by this section, even in cases of disputes between employers and employees, includes injuries to the business of an employer; (2) "the peaceful" means of persuasion permitted by the section do not include means leading inevitably to intimidation or obstruction, and whether the means adopted in any particular instance are attended by such danger is a question for the judge, who has heard witnesses and familiarized himself with the circumstances of the case; (3) the members of a local union and the union itself, though not directly involved in a dispute between an employer and employees, have a sufficient interest in the wages paid the latter to entitle them to use lawful and peaceful persuasion in behalf of striking employees. Furthermore, we are informed generally, that section 20 introduced no new principle "into the equity jurisprudence of the federal courts," but is "merely declaratory of what was the best practice always."[63]

[61] Decided Dec. 5.

[62] Duplex Printing Co. v. Deering, 254 U. S. 443.

[63] This is in flat conflict with J. Pitney's statement in the Duplex case that § 20 "imposes an exceptional and extraordinary restriction upon the equity

Unquestionably these two decisions signalize a new era in the effort to extend the rule of law into the field of industrial controversy. "Government by injunction," which sprang full-panoplied from the judicial bosom in the decision in the Debs case,[64] has not proved a success in all respects; yet the only tolerable escape from it was the one which the Coronada decision opens up, to wit, legal responsibility on the part of organized labor. And both cases previse a long line of decisions in which the right of labor, the rights of employers, and the rights of the public will undergo definition in relation to each other by the characteristic judicial process of exclusion and inclusion.

2. Anti-Trust Decisions

Of "anti-trust" decisions under the Sherman Act or the Clayton Act, or both together, one condemned the so-called "open competition" plan of the American Hardware Association,[65] another pronounced unlawful the endeavors of the Beech-Nut Packing Company to thrust a schedule of resale prices upon dealers in its product,[66] a third held void a contract whereby certain vendors of patterns agreed with the manufactures not to sell other makes,[67] a fourth set aside the famous "tying leases" of the Shoe Machinery Trust, whereby the trust utilized its control through patents of certain kinds of machinery to compel lessees thereof to hire other needed machinery from it,[68] and a fifth decreed that the Southern Pacific Company must surrender control of the Central Pacific Company's lines.[69] Lastly it was determined that organized baseball, though involving considerable interstate travelling, is not "interstate commerce" within the meaning of either of the Anti-trust Acts.[70]

powers of the courts of the United States and upon the general operation of the Anti-Trust Laws." The practical effect of this difference of point of view may appear in future cases.

[64] 158 U. S. 564.

[65] American Column & Lumber Co. v. U. S. (Dec. 19).

[66] Federal Trade Commission v. Beech-Nut Packing Co. (Jan. 3).

[67] Standard Fashion Co. v. Magrane-Houston Co. (Apr. 10).

[68] United Shoe Machinery Corp. v. U. S. (Apr. 17).

[69] United States v. So. Pac. Co. (May 29).

[70] Federal Baseball Club v. National League etc. (May 29). Compare Pigg v. International Text B'k Co., 217 U. S. 91.

3. The Volstead Act; Miscellaneous

Of two cases interpretative of section 3 of the Volstead Act, one held that it forbade the removal of distilled liquors acquired before the act went into effect from government warehouses to the dwellings of the owners of the liquors,[71] and the other that it inhibited the transportation through the United States of intoxicants proceeding from a Canadian port to a foreign port or even their transference from one British ship to another in New York harbor.[72] The Street case,[73] decided last term, was distinguished on the ground that the Safety Deposit Company did not "possess" the liquors involved in that case since Street had access to them at all times, thus making the storage "an adjunct to his dwelling." In the second case Justice McKenna, dissenting, made the good point that neither the Volstead Act nor the Eighteenth Amendment were intended to prevent the use of intoxicants as beverages throughout the world but only in the United States, and that, therefore, transportation through the United States did not fall within their terms; but all to no avail. A third decision manifests like zeal in sustaining the "concurrent power" of the states in enforcing prohibition.[74]

A dope fiend is not a "patient" within the meaning of the Harrison Anti-Narcotic Act.[75] The labelling of shoddy as "natural wool," and the like, may be forbidden under the Trade Commission Act.[76] Section 3 of the Interstate Commerce Act does not forbid different rates by different carriers between localities but unjust and discriminatory rates by the same carrier.[77] The Federal Employers' Liability Act does not extend to a railway employee who was injured while working in the company's repair shops on a dismantled engine which had been in the shops more than a month and was not returned to service for another month.[78]

4. The Judicial Code

Section 237 of the Judicial Code, as amended in 1916, distinguishes in the case of appeals from state courts, between suits "where is drawn in question the validity of" a state statute and suits where, more broadly,

[71] Corneli v. Moore (Jan. 30).
[72] Anchor Line v. Aldridge (May 15).
[73] Street v. Lincoln Safety Deposit Co. 254 U. S. 88.
[74] Vigliotti v. Pa. (Apr. 10).
[75] United States v. Behrman (Mar. 27).
[76] Federal Trade Commission v. Winsted Hosiery Co. (Apr. 24).
[77] Central Railroad Co. of N. J. v. U. S. (Dec. 5).
[78] Industrial Accident Commission v. Payne (May 29).

"any title, right, privilege, or immunity is claimed under the Constitution." The former may be appealed to the Supreme Court on writ of error, and when they are so appealed the court must pass upon the constitutional question raised; but for the latter only the writ of *certiorari* is available; which leaves it with the court to say whether or not it will exercise its reviewing function. In two or three cases the question was raised whether a suit involving a state statute which was constitutional in form but had been unconstitutionally applied was appealable by writ of error; a question which the court, following the principle that it must read state enactments through the eyes of the state court of final authority, answered affirmatively.[79] Subsequently, Chief Justice Taft has urged that all appeals should be by writ of *certiorari*, thus leaving the court free to reject those which are without merit. The reform is one greatly needed to prevent the court's time from being wasted by the misguided vanity of attorneys.

Another case decided that a collector of internal revenue is not suable for duties mistakenly collected by his predecessor; that the latter's liability is purely personal.[80]

B. QUESTIONS OF STATE POWER

I. THE "COMMERCE" CLAUSE

"Where goods are purchased in one state for transportation to another, the purchase is interstate commerce quite as much as the transportation." This doctrine, announced in Dahnke-Walker Milling Co. v. Bondurant,[81] gives a new extension to the "commerce" clause as a restriction on state power quite parallel to that which was effected years ago in the famous case of Robbins v. Shelby Taxing District.[82] Like that decision, the recent one proceeds from the definition of commerce

[79] See especially Dahnke-Walker Milling Co. v. Bondurant (Dec. 12). The case is discussed under B., I. *infra*, in another connection. Commissioners of Road Improvement Dist. No. 2 v. St. Louis, S. W. R. Co. determined that proceedings in an Arkansas county court to assess damages and benefits growing out of a road improvement constituted "a suit at common law" within the meaning of § 28 of the Judicial Code, which provides for removals of such suits by a non-resident party to the proper federal district court, notwithstanding that they involved a mixture of legislative, administrative, and judicial elements.

[80] Smietanka v. Indiana Steel Co. (Oct. 24).

[81] Decided Dec. 12.

[82] 120 U. S. 489. The case lays down the doctrine that the negotiation of sales in a state of goods to be introduced into it from another state is interstate commerce.

as "traffic," which is indeed its primary signification, and the way had been paved for it by the precedents.[83] Nevertheless, it is an important development of the law, as the later application of it, in Lemke v. Farmers' Grain Co.,[84] to set aside a vital part of North Dakota's plan for controlling the marketing of grain in the interest of the growers, strikingly demonstrates. Reciting the argument that this legislation was needed to protect growers "from fraudulent purchases and to secure to them fair prices," the Chief Justice replied that "Congress is amply authorized to pass measures to protect interstate commerce if legislation of that character is needed."[85]

And hardly less noteworthy is the holding in two other cases that, in view of the final destination of the vast proportion of the product, the preliminary steps in the assembling of oil or gas through a company's intrastate branch lines into its main pipe lines for shipment out of the state must be regarded as interstate commerce.[86] "The typical and actual course of events," said Justice Holmes, speaking for the court, "marks the carriage of the greater part as commerce among the states, and theoretical possibilities may be left out of account." This signalizes a wide, but not altogether unheralded, departure from the doctrine of Coe v. Errol,[87] that the mere fact of an article's being intended for exportation to another state does not render it an article of interstate commerce—a principle, however, which still holds, another decision warns us, in the case of articles in process of manufacture.[88]

But while in these cases the court made new law, in one or two others it seems to have beaten a retreat from positions recently taken up.

[83] Brown v. Md., 12 Wheat. 419, is the leading case.

[84] Decided Feb. 27.

[85] This language, while far from unambiguous, is evidently intended to convey that such power as is withdrawn by this decision from the state may in case of necessity—a legislative question—be exercised by Congress; a deduction which is confirmed by the grounds of the decision itself, unless a new "twilight zone" has been created. And whatever the decision signifies, the doctrine illustrated by it is obviously applicable to traffic in any of the principal commodities.—It is worth noting, in passing, that this new extension of the "commerce" clause probably takes away from the states much more valuable "sovereignty" than the Child Labor decision saves to them; and this is done by judicial interpretation alone.

[86] Eureka Pipe Line Co. v. Hallanan, and United Fuel Gas Co. v. Same (Dec. 12).

[87] 116 U. S. 517. Cf. So. Pacific Terminal Co. v. I. C. C., 219 U. S. 498.

[88] Crescent Cotton Oil Co. v. Miss. (Nov. 14).

Thus in Texas Co. v. Brown[89] the question of state taxation of oil products brought into it from other states was again before the court, and the doctrine arrived at that, "although the state may tax the first domestic sale" of such products "or tax them upon their storage in stationary tanks awaiting sale, it may not, without consent of the owner, impose its power [either for the exaction of inspection fees or taxes] upon the product while yet in the tank car, but must resort to other means of collection, if need be;" this, because ordinarily the oil has not "come to rest" in the state until transferred from tank car to storage tank. So far as sales within the state of oil in the original package are concerned this seems to be a direct repudiation of Bowman v. Continental Oil Co.,[90] decided last term, and a return in principle to Brown v. Houston.[91] Also, the court refused to extend the benefits of International Paper Co. v. Massachusetts[92] to a foreign corporation all of whose property lay within the taxing state;[93] but in view of all the facts, the case is perhaps illustrative only of the maxim *de minimis lex non curat.*

II. THE FOURTEENTH AMENDMENT

1. The Arizona Restaurant Case

No decision of the term has attracted more animadversion than that in Truax v. Corrigan,[94] the facts in which were as follows: Plaintiffs in error, restaurant keepers in Bisbee, Arizona, becoming involved in a dispute over wages with defendants in error, their employees, the latter went on strike, while in order to assist them, the local union to which they belonged pronounced a boycott on plaintiffs' place of business, before which agents of the union patrolled continuously during business hours with banners denouncing plaintiffs, "made insistent and loud appeals all day long" to would-be patrons, and circulated libels, epithets, and threats against plaintiffs, their patrons and employees—all with the final result of a serious falling-off in plaintiffs' business. By section 1464 of the Arizona Civil Code, which is couched in almost the phraseology of section 20 of the Clayton Act, the state courts were

[89] Decided Apr. 17.

[90] 256 U. S. 642; commented on in this *Review*, XVI, p. 239. See also Askren v. Continental Oil Co., 252 U. S. 444, to the same effect.

[91] 114 U. S. 622.

[92] 246 U. S. 135.

[93] Hump Hairpin M'f't'g. Co. v. Emerson (Mar. 27).

[94] Decided Dec. 19.

forbidden to issue injunctions in labor disputes except to "prevent irreparable injury to property," or to enjoin any person "from terminating any relation of employment . . . . or persuading others by peaceful means so to do . . . . or from ceasing to patronize . . . . any party to such dispute, or persuading others by peaceful means so to do." An Arizona court, having been applied to by plaintiffs in error for an injunction, held that it was inhibited by the provisions just quoted from granting such relief and the state supreme court sustained this ruling. In the case before the Supreme Court plaintiffs in error contended that thus interpreted, section 1464 deprived them of property without due process of law and denied them the equal protection of the laws contrary to the Fourteenth Amendment—a view which was sustained by the court, though by the narrow margin of five judges against four.

The opening section of Chief Justice Taft's opinion for the majority is grounded on the proposition that due process of law implies "a required minimum of protection for everyone's right of life, liberty and property" which neither Congress nor a state legislature may withhold—a proposition, by the way, which has an obvious bearing on the question of the validity of the projected Anti-Lynching law. He then points to the characterization by the Arizona supreme court of defendants' conduct as "lawful," and concludes thus: "To give operation to a statute whereby serious losses inflicted by such unlawful means are in effect made remediless is, we think, to disregard fundamental rights of liberty and property, and to deprive the person suffering the loss of due process of law." The conclusion seems incontrovertible. Nor does Justice Holmes's caveat against "delusive exactness" as "a source of fallacy throughout the law," which is accompanied by the statement that business is not property in the same sense as real estate, but rather "a course of conduct," seem particularly pauseworthy in this connection, the more especially since the same view of property was involved in the American Steel Foundries case,[95] to the decision in which Justice Holmes concurred. Likewise, Justice Brandeis's suggestion that the value of a business is always open to inroads by competitors seems not exactly relevant, since even competitors—whose rights are much more venerable than those of labor unions—are held today to increasingly strict requirements in the matter of fair dealing.

In short, up to this point the advantage of position is decidedly with the majority. But now suppose that the Arizona supreme court did

[95] See *supra*, under A, IX, 1.

not really intend to leave plaintiffs in error entirely remediless but only to withhold from them the equitable relief of injunction—which seems, in fact, the more probable assumption. Yet even when given this mitigated construction, section 1464 still offends, the Chief Justice argues, against the "equal protection" clause, which he contends, prohibits unjustifiable privileges and exemptions no less than unjustifiable disabilities and burdens. Thus, he says, if competitors of plaintiffs in error had done the things which its striking employees did, there is no doubt that they could have been enjoined—why, then, should a special case be made of the latter? Justice Pitney answers by pointing to the fact that employees have been made a special case of before, as for instance, in employers' liability and workmen's compensation legislation. But, rejoins the Chief Justice, classification "based on the relation of employer and employee in respect of injuries received in course of employment" is one thing, and "classification based on the relation of an employer, not to an employee, but to one who has ceased to be so, in respect of torts thereafter committed" by the latter on the business and property of the former, is quite another; and he asks whether a legislature would be justified in excepting workmen from criminal prosecutions for assaults on former employers and in leaving the latter only their remedy at common law? The question strikes one as pertinent; nor does Justice Brandeis's elaborate review of the objections that have from time to time been raised against the use of injunctions in labor disputes—most of which apply to their use on any occasion—necessarily prove more than the desirability of regulations looking to their considerate employment.[96]

[96] J. Pitney also argues that the discrepancy, pointed out by C. J. Taft between the position before the law of plaintiffs' competitors, on the one hand, and that of their former employees, on the other, "is not a matter of which plaintiffs are entitled to complain under the 'equal protection' clause," there being "no discrimination against them." This both overlooks the purely illustrative purpose of the Chief Justice's argument at this point, and implies that no one is entitled to complain under the clause unless he has been subjected to some disability in comparison with others similarly situated. But while it is true that most of the cases have arisen in consequence of complaints of this sort, there can be no question that the clause always had the broader application given it in this case. Why, indeed, should not one who finds it impossible to obtain judicial protection for his acknowledged rights because of the immunity of his adversary, be entitled to complain that he is being denied the "equal protection of the laws," especially since it is evident that he is? Nor should it make any difference that he is the member of a class similarly disadvantaged and his adversary the member of a class correspondingly advantaged; the discrimination is one which must be

It ought, perhaps, to be pointed out that this decision preceded that in the Coronado case by some months. So the idea is suggested that the latter may represent an attempt at compromise between the majority and minority of the court in the former case. For, as was hinted before, if labor unions become generally suable for their torts, the contention, today incontrovertible in fact, that the injuries they do property are irreparable, will lose force, and thus the very basis will be removed for the issuance of injunctions in labor controversies.

2. *Protection of Labor*

In Levy Leasing Co. v. Siegel,[97] the court reiterated its decision of last term sustaining the New York rent laws against objections based on the "due process of law" and "obligation of contracts" clauses.[98] Justice Clarke's opinion is rather more explicit, however, in dealing with the latter point[99] than was Justice Holmes's and also in stating the grounds upon which the court based its finding that the emergency declared by the legislature "existed when the acts were passed."[100]

justified by the ordinary tests—must, in short, be reasonable. As a matter of fact, one of the earliest cases in which the principle of legal equality was successfully invoked against legislative action in this country invoked it in this broader sense: Holden v. James, 11 Mass. 396. See also the two earliest cases under the Amendment: Barbier v. Connolly, 113 U. S. 27, and Yick Wo v. Hopkins, 118 U. S. 356; also Cooley's *Constitutional Limitations*, p. *390 ff. Furthermore the Chief Justice might well have been content to rest his argument exclusively on the "due process" clause, pointing to the notorious fact that, whatever the Arizona supreme court intended in designating defendants' conduct as "lawful," practically there was no remedy against it except injunction—that in such cases, injunction is, if not *due* process of law, at any rate the *only* process even measurably efficient.

[97] Decided Mar. 20.

[98] Block v. Hirsh 256 U. S. 135, and Marcus Brown Holding Co. v. Feldman, *ibid*, 170; commented on in this *Review*, XVI, pp. 33–35, 240, 242.

[99] On the subordination of the obligation of contracts to the police power, J. Clarke cites Manigault v. Spring, 199 U. S. 473, Louisville & Nashville R. Co. v. Mottley, 219 U. S. 467, and other cases.

[100] In this connection the opinion cites, first, "the notorious fact that a grave social problem has arisen from the insufficient supply of dwellings in all large cities of this and other countries" in consequence of the cessation of building activities traceable in turn to the war; secondly, certain official reports on the situation in New York; and thirdly, "the very great respect which courts must give to the legislative declaration" of an emergency. And the emergency being granted, the relation of landlord and tenant becomes one affected with a public interest and so subject to regulation in the way attempted by the acts.

Other cases clear new ground for the ever advancing police power. In Ward v. Krinsky[101] the court sustained the recent extension of the New York Workmen's Compensation Act to all employments involving four or more employees, farm laborers and domestic servants alone excepted. Taken in conjunction with the construction given the act by the state court of appeals, the decision practically leaves it with the state legislature to determine what employments are hazardous.

In Prudential Insurance Co. v. Cheek[102] was sustained the requirement of a Missouri statute, enacted in 1909, that any corporations doing business in the state shall furnish through its superintendent or manager to any employee leaving its employment, whether voluntarily or otherwise, after ninety days service, a letter setting forth the nature and duration of such service and the reason why the employee left it. Justice Pitney, speaking for the court, based the "reasonableness," and so validity, of this regulation under the "due process" clause, on two propositions: first, that the right to do business as a corporation "is not a natural or fundamental right;" and secondly, that "the reputation of the dismissed employee is an essential part of his personal rights—of his right of personal security." To support the latter statement he pointed to a growing custom among employers not to employ any applicant for a job until the name of the previous employer has been furnished and information has been forthcoming from the latter as to the cause of the applicant's leaving his former job. At the same time, the opinion is careful to declare that the principle laid down in the Coppage case,[103] that an employer may discharge an employee for any reason, or no reason, remains unaffected. In another case a similar Oklahoma statute, but with more detailed provisions, was also sustained.[104]

3. Regulation of Public Utilities; Judicial Notice

In a case involving gas rates, the court took cognizance of the fact that there has been an "enormous increase in the cost of labor and materials since 1908."[105] In another, of which street railway fares were the subject matter, it noticed that "the period following the World War has in general been one of continuous price recession."[106] The

[101] Decided June 5.
[102] Same date.
[103] 236 U. S. 1.
[104] Chicago, Rock Island, & Pacific R. Co. v. Perry (June 5).
[105] Newton v. Consol. Gas Co. (Mar. 6).
[106] Galveston Electric Co. v. Galveston (Apr. 10).

latter case also furnishes the following important rule: "Good will and franchise value of a street railway system should be excluded from the base value of property used in the public service when determining whether a rate fixed by municipal ordinance is confiscatory." Also important is the holding in a third case that a state may authorize its corporation commission to make rebates to patrons of a gas company for deficiencies of service, the determinations of the commission being subject to judicial review.[107]

4. Control of Foreign Corporations

Of two fairly obvious rulings under this heading, one announces that the inherent difference between corporations and natural persons is sufficient to justify a state in imposing restrictions upon the right of the former to do business within its borders which are not applied to the latter;[108] and the other states that the right of a foreign corporation doing a domestic business to be secure from conditions which amount to a taking of property without due process of law must be considered to have been waived as to statutes which were in effect when the corporation entered the state.[109] A third case raised a more difficult issue and is dealt with below.

5. Taxation

It is a principle of constitutional law that a state may not tax property which is not within its jurisdiction; that for it to do so would be to deprive one of property without due process of law. In Anderson v. Durr[110] the question was, whether Ohio could tax a resident on his membership in the New York stock exchange. Justice Holmes, speaking for himself and two others, thought the membership an interest "so local in its foundation and principal meaning that it should stand like an interest in land." But the majority of the court sustained Ohio's exaction on the principle of *mobilia sequuntur personam*.[111]

[107] Oklahoma Natural Gas Co. v. Okla. (Mar. 20).

[108] Crescent Cotton Oil Co. v. Miss. (Nov. 14).

[109] Pierce Oil Corporation v. Phoenix Refining Co. (May 15).

[110] Decided Nov. 7. A leading case in connection with the general subject is Union Refrigerator Transit Co. v. Ky. 199 U. S. 194.

[111] A few minor cases under the Amendment, turning often on peculiar situations, are not listed here. Under both the "due process" clause and the "obligation of contracts" clause, it was held in Atchafalaya Land Co. v. Williams Cypress Co. (Mar. 13), that a state may enact statutes of limitation, provided

III. NATIONAL SUPREMACY; RESORT TO THE NATIONAL COURTS

A state may not revoke a license to a foreign corporation to do domestic business within the state merely because it resorts to the federal courts. State action, whether legislative or executive, which is calculated to curtail the right of citizens to resort to the federal courts is void, "because the sovereign power of a state in excluding foreign corporations, as in the exercise of all others of its sovereign powers, is subject to the limitations of the supreme fundamental law." This doctrine, laid down in Terral v. Burke Construction Co.,[112] presumably settles a point long mooted, by explicitly overruling conflicting holdings.[113] Even so, a state may confine to its own courts suits brought against its treasurer to recover taxes wrongfully paid.[114]

Two cases apply and extend the rule that a state may not tax lands belonging to the United States within its limits,[115] while a third illustrates the fact that a state's taxing power over national banks is governed by the will of Congress as that has been indicated in section 5219 of the Revised Statutes.[116]

In a single term of court, Chief Justice Taft has made a notable bid for fame in his new field of work. His leadership of the court is already apparent; his comprehension of its characteristic problems assured; his opinions show grasp, with all of clarity and vigor that the phrase implies. He is manifestly determined that the court shall remain a real factor of the national life; and that is well. The court is not infallible by a long way, but views expressed with the force and lucidity needed to evoke intelligent criticism are already on the way to correction; while the only—and inevitable—remedy of inertia is extinction.

"They allow a reasonable time after their enactment for the assertion of an existing right on the enforcement of an existing obligation." The two or three other cases under the "obligation of contracts" clause are uninstructive. Ferry v. Spokane, P. & S. R. Co. (Apr. 10) teaches that "dower is not a privilege or immunity of citizenship" either within the meaning of Article IV, § 2, or the Fourteenth Amendment.

[112] Decided Feb. 27. Compare the cases cited in Notes 107 and 108, *supra*.

[113] Doyle v. Continental Ins. Co., 94 U. S. 535, and Security Mutual Life Ins. Co. v. Prewitt, 202 U. S. 246. Compare Home Insurance Co. v. Morse, 20 Wall. 455, where the present doctrine is foreshadowed.

[114] Burrill v. Locomobile Co. (Feb. 27).

[115] Irwin v. Webb (Mar. 20), and Gillespie v. Okla. (Jan. 30). The leading case is Van Brocklin v. Tenn., 117 U. S. 151.

[116] First National Bank v. Adams (Apr. 10).

The number of cases decided last term was about the same as the year previous, but it is to be observed that the pages in which they are reported are five per cent fewer. The process of curtailment could be carried farther with advantage. Judges need sometimes to be reminded of the missionary sermon which forced Mark Twain, when finally the collection plate was passed, to abstract ten cents from it. They seem not always to be aware when demonstration is complete—or mayhap, impossible.

LEGISLATIVE NOTES AND REVIEWS

EDITED BY WALTER F. DODD

Administrative Reorganization in Maryland. In 1916, with the adoption of the budget amendment to the constitution, Maryland made a long stride forward in the direction of better state government. That amendment provides that the governor shall formulate the budget and present it to the legislature. He, or any officer designated by him, may appear on the floor of the legislature to discuss and defend his estimates.

The power of the legislature over the proposed financial program is materially reduced. Generally speaking, it can only reduce or strike out items. It may not insert new items. Nor may it increase items except those relating to the legislature itself and those relating to the judiciary. The "Budget Bill" becomes law immediately upon its passage without any further action by the governor. The legislature may, however, pass "Supplementary Appropriation Bills." But they may not be considered before the budget has been finally acted upon by both houses. They are, further, subject to the following limitations: every such bill must be confined to a single work, object or purpose; each bill must make provision for the revenue necessary to pay the appropriation and shall direct how the tax to raise it shall be levied and collected; in each instance it will require a majority vote of the whole number of members of each house—the vote on final passage to be recorded by yeas and nays; and, finally, all such bills are subject to the governor's veto power. It should be added that, if the budget has not been finally acted upon by the legislature three days before the expiration of regular session, the governor shall by proclamation extend the session for such further period as will in his judgment be necessary for the final disposition of it. During this period the legislature may not consider anything but the budget, except the expenses necessary in connection with the lengthening of the session.

While it can be said, therefore, that Maryland has gone further than any other state in strengthening the position of the governor's budget powers in relation to the legislature, something else was obviously necessary. In order to enable the governor to present to the legislature

a well matured program for which he could accept a reasonable degree of responsibility, it was necessary to introduce his influence earlier in the process of budget-making. The administrative officials, not appointed by the governor nor responsible to him except in a nominal way, can not be expected to give the scrutiny to, nor exercise the restraint in, the formulation of the estimates so highly necessary to the budget-making authority.

An attempt has been made to meet this necessity, as well as to improve the general efficiency of the state government, by the administrative reorganization provided for by Chapter 29 of the Acts of the General Assembly of this year. The session of 1920 appropriated a sum of money to enable the governor to make a survey of the entire administration. He engaged the services of the firm of Griffenhagen and Associates of Chicago, who submitted their report to him in April of 1921. While disregarded to an extent, this report and the accompanying recommendations have served very largely as the foundation for the reorganization completed this year.

The organization of the administrative system of Maryland was no better and no worse than those found in most of the states of the Union. Article II of the constitution apparently contemplates that the governor should be a real chief executive. The first section provides that "the executive power of the State shall be vested in a Governor," and section 9 that "he shall take care that the laws are faithfully executed." But, like the constitutions of other states, it proceeds to distribute the executive power among several important state officers—though it is true our constitution does not go so far as do the constitutions of many states in this respect. It creates three important state officers, the attorney general, the comptroller, and the treasurer. Both of the latter compose the treasury department. The comptroller is elected by the people and the treasurer, by the two houses of the legislature—both for two-year terms. The attorney general is elected by the people for a four-year term. In addition, the constitution creates four less important officials, whose duties are practically entirely statutory. They are, the secretary of state, the adjutant general, the state librarian, and the commissioner of the land office. All are appointed by the governor subject to confirmation by the senate.

The legislature has supplemented these administrative officers by a host of officers, boards, and commissions, so that at the time of reorganization there were in all seventy-seven separate and distinct administrative agencies in the state government exclusive of the governor.

This has been done, generally speaking, without any consistent policy of coördination or interrelation. The system shows the evidence of every passing fashion in administrative organization. The constitution was adopted in 1867, that is, before the board form of organization had gained all but universal sway. The offices created by it are, therefore, with one exception, headed by single officials. The creations of the legislature have, on the other hand, been very largely of the board or commission type. Of late, however, the pendulum has swung somewhat in the other direction, and many of the recent creations have been of the single-head type.

It may be of interest to summarize briefly the system as it existed prior to the reorganization. There were in all, as has been said, seventy-seven separate, independent, and uncoördinated state administrative agencies—and with few exceptions these same agencies still exist, grouped into appropriate departments. Of these seven were headed by a single executive. Six were appointed by the governor alone. Most of them are very unimportant, such as, the weigher of tomatoes, the measurer of woodcarts, the inspector of hay and straw. Five generally more important officers were appointed by the governor and senate. Two, the comptroller and the attorney general, elected by the people. One, the treasurer, elected by the legislature. The board of public works (the governor, the comptroller, and the treasurer) appointed the auditor, the bank commissioner, and the insurance commissioner. The terms of these officials range generally from two to four years, the terms of the commissioner of motor vehicles and the state employment commissioner, however, being for three and six years respectively. All, except two, are salaried officers; the exceptions being the measurer of woodcarts and the inspector of hay and straw, who subsist on fees.

Of the sixty boards and commissions it is harder to speak without confusion. In membership they run all the way from two to thirty. One, the war records commission, has as high as 370 members. The most frequent number is three and five. The terms of service vary from two to nine years, while thirteen boards have an indefinite term. In the case of twenty-two boards and commissions, the terms of the members overlap. This is particularly true in case of the longer terms, six years and above. Thirty-three boards are non-salaried. The members of sixteen receive a *per diem* for their services. None are paid in fees.

As to manner of appointment, equally great variety is found. Seven were composed entirely of members serving *ex officio*. Of thirteen

others the membership was *ex officio* in part. The governor was a member of eleven boards and commissions. He alone appointed the members of twenty-four. Ten others were appointed by the governor and the senate. In four cases the governor was confined to the appointment of nominees presented by certain professional societies. Finally, in three cases the appointments were made entirely by private parties or organizations.

Very little attempt had been made before the present reorganization to group together similar or related services. Thus, the state board of labor statistics and the state industrial accidents commission were wholly separate and unrelated. So were the eighteen distinct boards for examining and licensing various trades, vocations, and professions. Ten separate and distinct agencies existed for the service or regulation of private business enterprise.

The survey disclosed many interesting things. Several state agencies were practically non-existent. This was true of the weigher of tomatoes, the measurer of woodcarts, the inspector of hay and straw, and the state agricultural lime board. In several instances no means of control existed. The state tobacco inspector, the board of electrical examiners, and various medical examining boards, were not required to make any reports. The various vocational and professional examining and licensing boards had no regular offices and no employees, and their records were in very deplorable shape.

The removal power of the governor of Maryland is extensive, and through this means he may exercise very strong influence upon the conduct of administration. In a comparatively small number of cases he can remove at pleasure. Under section 15 of article II of the constitution he can remove for cause and after a hearing any civil officer appointed by him alone or in conjunction with the senate. The constitution designates incompetence or misconduct as causes for removal. The greatest single need of the situation, as it existed, was the lack of central control by the governor. It was a physical impossibility for him alone to supervise the functions of seventy-seven different agencies without the aid of intermediate supervising functionaries responsible to him. In many cases information that anything was wrong has not come to him until it has become a matter of common knowledge.

The Griffenhagen report recommended the establishment of eleven departments as follows: executive, finance, law, militia, welfare, health, education, public works, commerce, labor, employment and registration,

and an independent office of the comptroller. Each department was to be headed by a director, appointed by the governor and removable by him at pleasure. The eleven department directors were to constitute a governor's cabinet. Internally the departments would be organized with an administrative office for all the routine and clerical work of the department. The governmental services or functions would be grouped into bureaus, each headed by a permanent official serving under the merit system and called a bureau chief or assistant director. There would, in addition, be organized in connection with most of the departments a system of one or more non-paid advisory councils. The comptroller's office would be independent of the general administrative system. He would be elected by the legislature and be responsible to it.

To put this plan into effect would have required three constitutional amendments, affecting the offices of the attorney general, the comptroller, and the treasurer, respectively.

Soon after Governor Ritchie had received the report of Griffenhagen and Associates he appointed a large committee of representative men and women of the Democratic party to consider it and make recommendations to him. This "State Reorganization Committee" authorized its chairman, Judge N. Charles Burke, to appoint an executive committee of twenty-one members to do the actual work on the plan. Eventually the work fell to a small sub-committee of the executive committee under the leadership of Judge Burke and in close coöperation with Governor Ritchie. In fact the governor, himself, did a great deal of the work. The sub-committee made an independent study of the state government and in their final report evolved a plan in many respects quite different from the Griffenhagen plan.

It seems quite certain that, while as compared with the experts' plan the Maryland plan falls short in many ways, the submission of the question to a large body of men and women of the governor's own party was a wise move. It consolidated party opinion behind the governor and eventually led to the endorsement of his reörganization plan by the state convention of the party. And when after a successful election on the issue the politicians tried to balk, they found the governor immovable with a solid public opinion behind him.

Prior to the meeting of the legislature Governor Ritchie, with the coöperation of a few able lawyers, drafted the plan in the form of a bill, being ready to have it introduced at about the beginning of the session of the legislature. After the usual routine study, and after encountering some opposition from the "machine," already referred to, the plan was

finally adopted, having been passed by the senate on the twentieth of February and passed by the house under suspension of the rules on the following day.

The final plan as adopted provides for the following departments:

I. *The Executive Department.* This department will be under the direct supervision and control of the governor. It will be composed of the following offices: secretary of state, parole commissioner, commissioner of the land office, superintendent of public buildings and grounds, department of legislative reference, commissioners of uniform state laws, state librarian.

II. *The Finance Department.* This department comprises the treasury department as created by the constitution, headed by the comptroller and the treasurer. As a matter of fact the comptroller is the real head, the duties of the treasurer being confined practically to the division of deposits and disbursements. The comptroller is the head of the division of financial review and control. The finance department is organized as follows: Division of Financial Review and Control, comptroller, auditor, bank commissioner, state insurance department, state tax commission, central purchasing bureau, Division of Deposits and Disbursements, Board of Public Works, composed of the governor, comptroller, and the treasurer.

III. *Department of Law*, under the direction and control of the attorney general.

IV. *Department of Education*, under the direction and control of the state board of education, a body of seven members appointed by the governor. It comprises the following agencies: state superintendent of schools, the Maryland public library advisory commission, the Maryland school for the deaf, the Maryland industrial training school.

V. *The State Board of Agriculture and the Regents of the University of Maryland.* This department is composed of the following: The University of Maryland, the state forester, state geological and economic survey.

VI. *The Department of Militia.* This department is under the direction and control of the adjutant general.

VII. *The Department of Welfare.* This department is under the direction and control of the board of welfare, which is a non-salaried body appointed by the governor and the senate. It comprises the following: the various correctional institutions under the direct control of the director of welfare and the board of welfare of which he is chairman: the state reformatories, the house of correction, the state penitentiary.

The various institutions for the feeble-minded and the insane under the direction and control of the board of mental hygiene and the commissioner of mental hygiene: the Spring Grove state hospital, the Springfield state hospital, the Crownsville state hospital, the Rosewood state training school, the Eastern Shore state hospital.

VIII. *The Department of Charities.* This department is governed by a non-salaried board of seven members appointed by the governor, who is a member *ex officio.* The chairman of the board is called the director of charities. In addition to these functions, the following institutions are allocated to this department: the Maryland tuberculosis sanatorium, the Pine Bluff sanatorium.

IX. *The Department of Health.* This department is governed by a board of eight members appointed by the governor. All are non-salaried except the chairman, who is known as the director of health.

X. *The Department of Public Works.* This department is governed by the state roads commission. This commission is appointed by the governor alone and may be removed by him at pleasure. It is composed of three members, non-salaried except the chairman, who is known as the director of the department. Its duties are confined to the construction and upkeep of the road system of the state.

XI. *The Commissioner of Motor Vehicles.* Besides the enforcement of the state laws relating to the titling, registration and licensing of motor vehicles and the licensing of operators, this department also has charge of the newly organized state police force.

XII. *The Conservation Department.* This department is headed by a conservation commissioner, whose duty it is to administer the state laws with reference to fish, game, and fur-bearing animals.

XIII. *The Department of Public Utilities:* public service commission of three members appointed by the governor; the people's counsel.

XIV. *The Department of State Employment and Registration.* This department is under the direction of state employment commissioner. It has charge of the administration of the merit system. In addition, eighteen examining and licensing boards are allocated to this department. But they are subject to control by, and must make their report to, the board of public works in the finance department.

There are, in addition, three unimportant state agencies which have not been allocated to any department. They are, the inspector of tobacco, the Maryland state board of censors, and the Maryland racing commission.

Finally, the act provides that the following officials shall constitute the governor's cabinet: the comptroller, treasurer, attorney general,

chairman of the state board of education, president of the state board of agriculture and of the University of Maryland, director of welfare, director of charities, director of health, director of public works, commissioner of motor vehicles, police commissioner of Baltimore city, conservation commissioner, and the commissioner of state employment and registration.

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Federal and State Power Commissions. The increasing importance of the states as coöperative administrative agents of the nation has been illustrated during the past two years by the relationship which has developed between the federal power commission and the water power agencies of various states.[1]

The federal power commission, which is an independent national agency composed of the secretaries of war, interior, and agriculture, was created by the Federal Water Power Act of June 10, 1920 (41 Stat. L., 1063), to exercise general administrative control over all water power sites and water power establishments that are located on the navigable waters, the public lands, and on the reservations of the United States.

To accomplish this function, the commission is required to coöperate with the state governments in making investigations of water resources and in publishing the results thereof. This coöperation may also relate to the permits and licenses which the federal power commission is required to issue for the purpose of authorizing the construction of dams, reservoirs, conduits, power houses, transmission lines and kindred projects.

Many states had administered their water power affairs through commissions and other agencies prior to the creation of the national agency, and since that time several of the state commissions have taken direct steps to coöperate with the federal power commission.[2]

The enactment of the Federal Water Power law was immediately followed by coöperative acts on the part of private organizations, state

[1] For other examples of federal and state coöperation see Holcombe, A. N., The States as Agents of the Nation, in *Southwestern Political Science Quarterly*, Vol. 1 (March, 1921), pp. 307–327.

[2] The legal and historical phases of state control of water power prior to 1911 is treated by Fairlie, J. A., Public Regulation of Water Power in the United States and Europe, in *Michigan Law Review*, Vol. 9, No. 6 (April, 1911), pp. 463–483.

officials, and state legislatures. Particularly active was the short-lived water power league of America which during the preceding January had been chartered under the laws of Delaware "to assist in the revision and codification of existing laws and passage of new laws and coördinating federal and state jurisdiction over waters and water ways."

In July following the Act of June 10, 1920 the league announced that its aim was "to establish working harmony between the states, municipalities, and the federal government,"[3] in the matter of water power development. It accordingly called a convention in Washington "to afford an opportunity to the several states that are interested in water power development to have their representatives come in contact with the federal power commission with a view that there may be evolved a workable program which will coördinate the activities in those states with that of the federal government."[4] At the convention the secretary of the federal power commission urged that the powers that had been conferred upon the commission should "be exercised in coöperation with all other agencies, Federal, State, and private."

Governors' Letters and Messages. The Water Power League wrote letters to the governor of each state asking his opinion of the effect of the Federal Water Power Act. Most of the replies expressed a wholesome spirit of state coöperation. For instance, Governor Morrow of Kentucky, replied there were "no adverse laws in Kentucky upon this subject."[5]

Answering for Governor Shoup of Colorado the state engineer stated that they would be pleased to have suggestions as to water power legislation. The chairman of the board of water engineers of Texas replying for Governor Hobby expressed approval "of coöperation between the State Government and Federal Government," all of which was to be attempted at the approaching session of the legislature. He further expressed gratitude that "some of the branches of the Reclamation Department are already coöperating with the State Government" in the development of water resources.

In his annual message to the legislature, Governor Parkhurst of Maine in 1921 urged that a study be made "of the effect of the Federal Water Power Act upon the development of and control of Maine's water powers."[6]

[3] *Bulletin* of the Water Power League of America, Vol. I, No. 1 (1920), p. 1.

[4] *Ibid* Vol. I, No. 2, p. 8. The proceedings of this convention are given verbatim in *Ibid.* Vol. I, No. 4.

[5] *Ibid.* Vol. I, No. 1.

[6] Maine *Legislative Record* (1921), p. 24.

Governor Cornwell reminded the 1921 session of the West Virginia legislature that the Federal Water Power Act "virtually compels a revision of the water power law now in the State statute books, so as to coördinate with the Federal Statute if the rights of the State are to be protected and if water-power development is to be encouraged."[7]

In its annual report for 1920, the Maine water power commission expressed confidence that the federal power commission's policy will "enable recommendations to be made as to a state policy which will not be at variance with the Federal law."[8]

Statutes. In 1921, Oregon and New York, created water power commissions for the specific purpose of coöperating with the federal power commission. Oregon made the governor *ex officio* commissioner of hydroelectric power and directed him to collect data concerning the hydroelectric resources "and to present same to the federal power commission."[9] The state commissioner was directed to urge upon the "federal power commission the merit and desirability of any hydroelectric project in any navigable stream" which he might deem worthy of presentation.

The New York legislature of 1921 created a state water power commission which was not only to coöperate wtih the federal agency but also to resemble it in organization and legal power. It consists of the conservation commissioner, state engineer and surveyor, attorney general, the temporary president of the senate and the speaker of the assembly. As in the federal power commission, the several members of the New York commission "may assign or transfer to the work of the commission such officers or employees of their respective departmental or office forces as the commission shall desire,"[10] and they are required to "appoint a Secretary, prescribe his duties and fix his salary" and employ engineers and other assistants, prescribe their duties and fix their compensation within a certain limitation.

Like the federal power commission the New York commission is authorized to hold hearings, issue licenses, inspect project works of licenses, examine their books, and "make rules and regulations as to the form of reports required to be made to the commission of licenses, and such special rules and regulations as it deems applicable to particular licenses, and projects licensed" and to make such other ordinances as may be necessary for the execution of the law.

[7] Journal of the Senate of West Virginia (1921) Appendix A, p. 36.
[8] P. 25.
[9] Oregon, Session Laws (1921) pp. 642–643.
[10] New York, Session Laws (1921) 579, p. 1736.

In relation to the national government it may "present for the consideration of the Congress or officers of the federal government, as occasion requires, the just rights of the state in relation to its territorial waters, and institute and prosecute, through the attorney-general, appropriate actions and proceedings to secure such rights, and defend, through the attorney-general, any action or proceeding calculated to impair such rights." Furthermore the commission may "coöperate with any officers, boards or bodies of the federal government in an endeavor to harmonize any conflicting claims of the state and the federal government to control over the leasing or licensing of the use of waters for power purposes to the end that the development of the water power resources of the state may be accelerated," and they may "act for the state in the matter of all applications made to the federal government or any of its officers, boards or Commissions for permits or licenses for the development or use of water power in the state, and may do and perform such acts in connection therewith as it deems proper to protect the interests of the state." They may also confer with the federal officials, in relation to the development of power on the St. Lawrence and Niagara rivers.

Persons obtaining licenses for power sites must promptly comply with all directions that the state commission may make in the interests of navigation and they must likewise "comply with such lawful rules and regulations as may from time to time be prescribed by the federal government, its duly authorized officers or agents relating to the navigation of the waters covered by the licenses." Kindred to the federal act are provisions for the regulation of rates charged for generated power, and stipulations as to the time limits for the construction of projects.

While there were no additional state commissions created in 1922 to coöperate with the federal power commission, the proposition has been ardently agitated in several states.

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Legislative Investigating Committees. This study covers some eighty investigations that are being carried on by the states, either separately or in coöperation, to be reported to the next legislature. Except in a very few instances, the investigating committees are created by legislative action. While not all of these commissions are of great importance from a legislative point of view, it is significant that the majority of them either are selected for their peculiar ability to deal

with the subject of investigation or are specifically granted expert assistance. In general they are accorded wide powers of obtaining information and are provided with funds. In some instances the legislatures failed to make specific appropriations to the committees, although public financial support is clearly indicated. In only a few instances the legislature expressly provides that the commission authorized is not to be financed by state funds.

The total amount specifically appropriated to all the committees is $736,100 divided among the groups as follows:

Water power, water supply and water ways	$386,000
Education	80,000
Statute revision	40,000
Soldiers' compensation, memorials, celebrations	36,000
State administration	33,000
Banking and industry	31,000
Taxation	6,500
Building and housing	5,000
Social welfare	4,500
Miscellaneous	600

The groups are here considered in order of financial support which indicates in a measure the importance they assume in the public mind—not forgetting, however, that certain kinds of investigation are necessarily more expensive than others.

Waterways, Water Power and Water Supply. The 1921 legislatures of seven states authorized coöperation in the Great Lakes, St. Lawrence tide-water enterprise.[1]

The Colorado river joint commission, to enter into an agreement respecting the utilization and disposition of the waters of the Colorado river and tributary streams and the rights of the states and the United States government thereto, consists of one representative from the United States government and one from each of the states watered or drained by the Colorado river and tributaries.[2]

[1] Illinois, appropriation $20,000, Laws 1921, p. 15, S.B. 497; Iowa, appropriation $5000 per annum, 2 years, Acts & Jt.R. 1921, c. 339; Michigan, appropriation $18,000, Laws 1921, p. 298, no. 136; Nebraska, appropriation Laws 1921, ch. 202; Montana, no expense to state. Session Laws 1921, p. 674, S.J.R. no. 2; Indiana Acts 1921, ch. 294; Wisconsin, appropriation $6250 annually, 2 years, Laws 1921, ch. 295.

[2] Arizona, appropriation $25,000, Session Laws 1921, ch. 46; California, Stat. and amend. 1921, ch. 88; Colorado, Session Laws 1921, ch. 246; Nevada (creates a permanent commission and appropriates $5000), Statutes 1921, ch. 115; New Mexico, appropriation $15,000, Laws 1921, ch. 121; Utah, Laws 1921, ch. 68; Wyoming, Session Laws 1921, ch. 120.

South Dakota[3] provided for a commission to survey the basins of the James and Big Sioux rivers, to determine the feasibility and cost of providing an adequate drainage system, Indiana for a commission to work out a plan for the improvement of the drainage system of the Kankakee river,[4] and for a commission to codify the drainage laws of the state.[5] Illinois[6] and Indiana[7] have authorized an interstate harbor commission to investigate and report upon the feasibility of a public interstate harbor at or near Wolf Lake and Lake Michigan, partly in Hammond and Whiting and partly in Chicago.

Two water resources surveys were authorized: one in Missouri,[8] by the bureau of geology and mines coöperating with the United States geological survey, and one in California,[9] by the state engineer. California appropriated $200,000 for this survey and directed the state engineer to investigate the possibilities of storage, control and diversion of the waters of the state, surface and underground, for public use and public protection.

West Virginia[10] authorized a commission on waterpower legislation and provided that the expenses be paid out of the contingent fund. Connecticut[11] authorized a commission to study the elimination from streams of all substances and materials polluting the same.

Education. That education ranks second in the list indicates at least a healthy dissatisfaction with present conditions.

The California[12] commission is to investigate the plan of operation and organization of agricultural colleges in the United States and to recommend a plan for the reorganization of agricultural instruction in the state of California.

The Kansas[13] school code commission is directed to present to the next legislature a report containing recommendations as to amendments and changes in the Kansas laws which will eliminate the overlapping in activities and will render the school system more efficient.

[3] South Dakota, appropriation, $20,000, Session Laws 1921, ch. 198.
[4] Indiana, appropriation $1000, Acts 1921, ch. 10.
[5] Indiana, appropriation $2500, Acts 1921, ch. 134.
[6] Illinois, Laws 1921, p. 36, H.B. 507.
[7] Indiana, Acts 1921, ch. 187.
[8] Missouri, appropriation $20,000, Laws 1921, p. 88, S.B. 372.
[9] California, appropriation $200,000, Stat. & amend. 1921, ch. 889.
[10] West Virginia (expenses out of contingent fund), Acts 1921, p. 649, S.J.R. 18.
[11] Connecticut, P.A. 1921, ch. 395.
[12] California, appropriation $10,000, Stats. & amend. 1921, ch. 698.
[13] Kansas, Laws 1921, ch. 303.

The New York[14] legislature of 1922 authorized a joint legislative committee to investigate educational conditions; and Illinois,[15] Indiana[16] and Oklahoma[17] each made provision for an investigation of the entire educational system of the state. The Indiana commission is to be financed out of the governor's emergency fund; Illinois appropriated $50,000; and Oklahoma appropriated $20,000 and stipulated that the expert services of Martin Brumbaugh of Philadelphia, Penn. be secured if possible and other experts from the United States bureau of education.

Statute Revision. Pennsylvania continued two commissions on revision of statutes and appropriated $5000 to each, one on the recording of deeds[18] and the other on the revision of the penal code.[19] Kansas[20] appropriated $25,000 to a commission of qualified lawyers appointed by the supreme court, to employ an expert to revise, compile, edit and index the general statutes. In New Jersey[21] a commission is authorized to revise the election laws, in Ohio[22] the superintendent of insurance is directed to prepare an insurance code, and in Rhode Island[23] a commission has been appointed to revise the probate laws. In Wisconsin a special joint legislative committee was appointed to assist the revisor of statutes[24] and another legislative committee was appointed to investigate systems of land registration and the recording of instruments affecting the title to real estate.[25]

Soldiers' Compensation, Memorials, Celebrations. A commission on adjusted compensation to soldiers will submit a bill to the 1923 legislature of Florida.[26] In West Virginia[27] a commission will report on a fitting and proper soldiers' memorial to be erected in the new capitol building.

Pennsylvania has appropriated $1000 for the expenses of a commission to select a state military cemetery,[28] $25,000 for a Battlefield com-

[14] New York, Letter N. Y. Leg. Ref. Lib.
[15] Illinois, Laws 1921, p. 31, S.B. no. 90.
[16] Indiana, Acts 1921, ch. 293.
[17] Oklahoma, Laws 1921, ch. 194.
[18] Pennsylvania, Laws, 1921, p. 1189, no. 441.
[19] *Ibid*, p. 1187, no. 439.
[20] Kansas, Laws 1921, ch. 207.
[21] New Jersey, Laws 1921, J.R. no. 6.
[22] Ohio, Laws 1921, p. 200, S.B. 194.
[23] Rhode Island, appropriation $5000, S. 97, 1922, Res. no. 43.
[24] Wisconsin, Session Laws, 1921, J.R. no. 5).
[25] Wisconsin, Session Laws, 1921, J.R. no. 54.
[26] Florida, Laws 1921, ch. 8463.
[27] West Virginia, Acts 1921, p. 655, S.C.R. no. 10, House substitute.
[28] Pennsylvania, Laws 1921, p. 322, no. 160.

mission to visit the battlefields of France and Belgium and select sites for monuments and markers, to select designs and ascertain the probable cost.[29] This state has also appropriated $10,000 for an Independence commission to coöperate with Congress, with the city of Philadelphia and with the legislatures of the states to provide for the proper celebration of the one hundred and fiftieth anniversary of American independence in 1926.[30]

The New Hampshire legislature authorized a commission to provide appropriate observance of the 300th anniversary of the first white settlement in New Hampshire in 1623.[31]

State Administration. Five states will have reports dealing with matters of state administration. Pennsylvania[32] has appropriated $5,000 for the expenses of an unpaid commission to investigate the laws organizing the several state departments and prepare a plan reorganizing and consolidating the same. Virginia[33] appropriated $3,000 for a commission to study the organization of the government, state and local, and make two reports,—one recommending improvements that may be effected without constitutional amendments and the other to include improvements conditioned upon necessary constitutional changes. Illinois[34] appropriated $25,000 for the expenses of a commission to investigate salaries, wages, fees and other compensation for personal services of all employes of the state, and make a plan for standardizing the same. Oregon[35] authorized a joint legislative committee to investigate: (1) existing conditions of accounting in the state; (2) the benefits to be derived from adopting a uniform accounting system; (3) the advisability of putting the state accounting system in the hands of an elected state auditor. South Dakota[36] authorized the governor to employ experts to make an efficiency survey of the state government.

Banking and Industry. Four reports on banking will be made to four state legislatures in 1923. In Oregon[37] a committee of five legislators acting with a like committee of the state bankers' association will

[29] Pennsylvania, Laws 1921, p. 1173, no. 432.
[30] Pennsylvania, Laws 1921, p. 1183, no. 437.
[31] New Hampshire, Laws 1921, ch. 178.
[32] Pennsylvania, Laws 1921, p. 1188, no. 440.
[33] Virginia (Act June 19, 1922).
[34] Illinois, Laws 1921, p. 66, H.B. 358.
[35] Oregon, General Laws 1921, p. 832, concur R. no. 7.
[36] South Dakota, Laws 1921, ch. 384.
[37] Oregon, General laws 1921, J.R. 14.

report on the question of the guarantee of bank deposits. No expense is to be incurred by the state for this committee. The Pennsylvania[38] commission authorized in 1917 and continued in 1921, with an appropriation for expenses of $8500, and the Rhode Island[39] commission provided by the legislature of 1922, with an appropriation of $5200 for expenses, will report on the laws of their respective states relative to banking institutions and other institutions that come under the supervision of the banking commissioner and recommend such changes in the law as seem advisable. In West Virginia[40] a commission will revise, re-enact and recodify the building and loan laws of that state. No financial provision is made for this committee.

In the industries, two states will give attention to coal mining. The Illinois[41] commission of nine members representing equally operators, practical coal miners and the public will submit a revision of the existing laws unanimously agreed upon and separate report on matters upon which the commissioners are disagreed. The appropriation for this commission is $7000.

The Indiana coal commission[42] of six members is in like manner representative, the public being represented by the department of mines and mining. This commission will codify the existing laws on coal mining. Their recommendations for new legislation must be unanimous.

On the problems of marketing, the Mississippi[43] agricultural and industrial commission created by the last session of the legislature, will study the economic conditions of the state and the marketing of Mississippi products. The Rhode Island[44] commission on foreign and domestic commerce with an appropriation of $15,000 will report to the governor in January of each year of its three years existence. In North Carolina[45] a commission on cotton is authorized to confer with commissions from other cotton states to ascertain (1) the world's demand for cotton, (2) the cost of cotton production, (3) the price to be fixed by the planters, and (4) to work out a scheme to finance the crops in order to maintain the price so fixed.

[38] Pennsylvania, Laws 1921, p. 1201, no. 447.
[39] Rhode Island, H. 786, no. 128, of 1922.
[40] West Virginia, Acts 1921, p. 659, H.J.R. 16.
[41] Illinois, Laws 1921, p. 39, H.B. 418.
[42] Indiana, Acts 1921, ch. 279, sec. 4.
[43] Mississippi, Ag. & indus. com. (8) marketing activities July 19, 1922.
[44] Rhode Island, H. 660, 1922, Res. no. 10.
[45] North Carolina, Public Laws 1921, p. 551, Res. no. 15.

Taxation. The question of how to raise more revenue and at the same time reduce or seem to reduce taxes is always of interest.

California,[46] Iowa,[47] Pennsylvania,[48] Utah,[49] Maryland,[50] New York,[51] Oregon[52] and Washington,[53] all provided commissions on taxation at their last sessions. California made the state board of equalization a permanent tax investigating committee, to report to each legislature at the convening thereof. Iowa's joint legislative committee on tax revision is given expert assistance and such sum for expenses as may be necessary to carry out the purposes of the act.

Pennsylvania's tax law revision commission of 1919 and the New York joint legislative committee on taxation were continued.

Utah and Oregon provided for investigations on methods of taxation to provide more equitable distribution and to afford adequate revenues to the state. The Maryland tax commission and the governor of Washington, through expert assistants, are instructed to investigate the entire subject of taxation.

Building and Housing Investigations. Three reports are in course of preparation on building and housing and one on home ownership.

The Illinois[54] building investigation commission report will deal with the cost of building and building materials, combinations, agreements, practices, etc. of employers, distributors and laborers, by which prices are affected. $50,000 was appropriated for the expenses of this commission. $10,000 was appropriated to the New Jersey[55] building code commission. The New York[56] legislature of 1922 authorized the committee on housing to continue its investigations.

The California[57] legislature directed the commission on immigration and housing to report to the 1923 legislature a bill or bills embodying a plan whereby working men may with the assistance of the state acquire homesteads on the installment plan.

[46] California, appropriation $2,500, each biennium. Stats. & amends. 1921, ch. 428.

[47] Iowa, Acts. and J.R. 1921, ch. 411.

[48] Pennsylvania, appropriation $5000. Laws 1921, p. 1077, no. 398.

[49] Utah, Laws 1921, ch. 133.

[50] Maryland, *Bulletin* National tax association, May 1922, p. 241.

[51] New York, Letter from N. Y. Leg. Ref. Lib. June 12, 1922.

[52] Oregon, appropriation $10,000. General Laws 1921, ch. 327.

[53] Washington, appropriation $20,000, Session Laws 1921, ch. 171.

[54] Illinois, Laws 1921, p. 29, S.B. 510, p. 858, S.J.R. no. 9.

[55] New Jersey, Laws 1922, J.R. 2.

[56] New York, Letter from N. Y. Leg. Ref. Lib. June 12, 1922.

[57] California, Statutes and amendments, 1921, ch. 142.

Social Welfare. The social investigations number eight, but they are not so well financed by legislative appropriation. Only $4500 is appropriated, $2000 by New Jersey and $2500 by Pennsylvania.

The commissions are the New Hampshire[58] commission to revise the laws relating to employers' liability and workmen's compensation; the Montana[59] investigation of the problem of old age among wage earners; the New Jersey[60] and the Pennsylvania[61] commissions to codify and revise the laws relating to the poor; the Utah[62] public welfare commission to study the question of public health and the problem of the dependent, neglected, delinquent and defective classes; the Minnesota[63] commission, recently appointed by the governor, to investigate the work being done by the state for the blind and for the prevention of blindness; the two state mental deficiency surveys of all public institutions including the public schools, one in Arizona[64] being made by the national committee on mental hygiene and the data compiled and prepared by the state legislative reference library, and the other in Virginia[65] being made by a state commission composed of state officials, legislators and citizens.

Miscellaneous. Of interest is the Rhode Island[66] joint special committee to determine how far the statutes of Rhode Island deny or abridge the political and civil rights of women. No women are on this committee and the appropriation is $600.

The Minnesota[67] legislature provided a commission to investigate the feasibility and the cost of establishing a state cement plant. The governor of Minnesota[68] has appointed a crime commission to study the causes and recommend methods of prevention.

Minnesota[69] has also a commission on the redistricting of judicial districts, and Tennessee[70] a commission on the installation of a voting machine.

[58] New Hampshire, Laws 1921, ch. 179.
[59] Montana, Laws 1921, p. 692, H.J.R. no. 7.
[60] New Jersey, 1922, J.R. no. 3.
[61] Pennsylvania, Laws 1921, p. 136, no. 84.
[62] Utah, Laws 1921, ch. 56.
[63] *School and Society*, Aug. 5, 1922, p. 156.
[64] Arizona, Laws 1921, S.C.R. 3.
[65] Virginia, S.B. 59, ch. 368.
[66] Rhode Island, 1922, S. 62, Res. no. 41.
[67] Minnesota, Laws 1921, ch. 477.
[68] Minnesota, apparently not created by legislative action.
[69] Minnesota, Laws 1921, p. 1031, Res. no. 14.
[70] Tennessee, Public Acts 1921, p. 597, H.J.R. no. 71.

Created as a practical way of effecting intelligent legislation, the reports of these commissions will be worth study. They point the trend of important legislation during the coming winter. We may expect them to throw new light upon the subjects of investigation.

LUCILE MCCARTHY.

Wisconsin Legislative Reference Library.

FOREIGN GOVERNMENTS AND POLITICS

EDITED BY FREDERIC A. OGG

University of Wisconsin

European Politics during the War. The "Economic and Social History of the World War," sponsored by the Carnegie Endowment for International Peace and edited by Professor J. T. Shotwell, of Columbia University, is planned to contain several volumes which will be of interest to students of foreign and comparative government. A. B. Keith's *War Government of the British Dominions* has already appeared and was reviewed in this journal last November. Among other volumes having a direct political bearing may be mentioned: W. G. S. Adams, *The War Government of Great Britain;* E. M. H. Lloyd, *The Mechanism of Certain State Controls* [in Great Britain]; G. D. H. Cole, *The British Labor Unions;* A. Shadwell, *Liquor Control in War Time;* R. Picard, *Syndicalism in France during the War;* M. Hauser, *Problems of Regionalism* [in France]; A. Bernard, *Economic and Social History of French Northern Africa;* M. Delahache, *Alsace-Lorraine;* A. Girault, *Economic and Social History of the French Colonies;* J. Redlich, *War Government in Austria-Hungary;* Count A. Apponyi, *The Effects of the War upon Government Administration and Public Opinion in Hungary;* and H. Pirenne, *Belgium and the World War.* Numerous monographs remain to be arranged for, notably on Germany, Russia, and the Balkan states.

Swiss Initiative Votes of June 11, 1922. On June 11 of this year three amendments to the Swiss federal constitution, proposed by initiative, were voted upon. The most important was one regarding naturalization. By Article 44, section 2, of the constitution of 1874, this subject was left to federal legislation. The proposed amendment attempted to place the more essential details of the process of naturalization in the constitution. Consent of the *Bundesrat* to the grant of communal and cantonal citizenship was to be given only in case the foreigner during the fifteen years prior to his application had lived at least twelve years in Switzerland, including the two years immediately

preceding his application. This requirement was not to hold in the case of married women or of children under fifteen years of age. Naturalized citizens who between five years of age and their majority had not lived at least twelve years in Switzerland should not be allowed to hold political office in communes or cantons or under the federation. Legislation might provide easier terms of naturalization for foreigners born and spending their childhood in Switzerland.

Switzerland has a relatively large alien population. At all times a problem, this condition caused acute difficulties during the war. In large part, the proposed naturalization amendment was an outgrowth of these war-time difficulties. It is interesting to note in the terms of the amendment itself the easier conditions proposed for foreigners born in or coming to the country as children. These easier conditions were proposed because it was felt that education in the Swiss public schools is the best preparation for full citizenship.

Both the *Bundesrat* and the Federal Assembly opposed the naturalization amendment. They called attention to the fact that the residence requirement had already been raised, from the three-year period fixed in the law of 1903, to four years in 1917, and to six years in 1920. Twelve years they held to be excessive. At present no other country requires more than ten years. For the provision regarding passive suffrage there was a precedent in the constitution of 1848, which excluded naturalized citizens from the National Council for a period of five years. However, this was omitted from the constitution of 1874, although in 1920 the *Bundesrat* proposed to return to the provision of 1848 on this subject. But to exclude naturalized citizens from public office for life was to create two classes of citizens, one of inferior rights, and this was contrary to the democratic form of state organization.

The second initiative was also directed against foreigners. According to Article 70 of the present constitution, the federal government has the right to expel from Swiss territory foreigners who endanger the internal or external safety of the federation. The proposed amendment made it not only the right but the duty of the federation to expel such foreigners, and formulated additional grounds for expulsion, namely participation in intrigues or political undertakings contrary to the constitution and of such character that they might disturb the good relations of Switzerland to foreign states; also participation in economic activities which are in conflict with good faith in commercial relations and which injure the general interests of Swiss business.

The *Bundesrat* also opposed this amendment as superfluous and dangerous. The sweeping character of the new grounds for expulsion is apparent. If adopted and enforced, they would undoubtedly lead to reprisals against Swiss citizens abroad.

In 1920 the third of the proposed amendments came close to adoption by the Federal Assembly, failing only because of disagreement on a matter of detail between the two houses. Thereupon it was made the subject of an initiative movement. Its purpose was to substitute for Article 77 of the constitution a provision making membership in the National Council incompatible not only with membership in the Council of States and the Federal Council, but also with the position of bureau chief in the departments under the Federal Council and with membership in the general and circuit directories of the federal railways. On this amendment the organs of the central government were silent.

According to official returns, the popular vote of June 11 was overwhelmingly against all three amendments; as follows, 347,988 to 65,828 on the first; 258,881 to 159,200 on the second; and 257,469 to 160,181 on the third. Not a single canton was carried for the first two, and only five cantons for the third amendment. It is evident that such feeling against resident foreigners as was developed in Switzerland during the war has in large part disappeared.

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The New Prussian Constitution. To the student of comparative constitutional law the new Prussian constitution of November 30, 1920, is of scarcely less interest than that of the reconstituted German Empire itself. In sharp contrast to American state constitutions, the instrument is of moderate length, about four thousand words, and is limited to the bare outlines of a frame-work of government. All doctrinaire elements are lacking. There is even no bill of rights. One is particularly impressed by its business-like character. It contains eighty-eight sections, grouped into eleven articles, as follows: the State; the Public Powers; the Diet; the Council of State; the Ministry; Legislation; Finances; Autonomous (local) Administration; Religious Communities; Public Functionaries; and Regulations regarding the Transition.

The principle of popular sovereignty is fundamental and determining throughout. The constitution is asserted to have emanated from the people, and they are declared to be the depository of the public powers. The popular will is revealed directly through the suffrage by means of

the initiative, the referendum and elections, and indirectly through the organs of government established by the constitution. The right to vote is universal, equal and direct, and accorded to all German citizens twenty years of age who are domiciled in Prussia. The initiative may be employed for three purposes: to amend the constitution; to enact, amend or repeal a statute; and to effect a dissolution of the Diet. In all cases the initiative petition is addressed to the Ministry who transmit it with their remarks to the Diet. When the proposal relates to a constitutional amendment or a dissolution, the petition must be supported by twenty per cent of the qualified voters; a statutory initiative petition requires only five per cent of the electors. Financial matters, including taxation and the appropriation of money, are not subject to the popular initiative. If the Diet itself gives effect to the initiative proposal in any of the three forms, the referendum does not follow. Otherwise, an election occurs at which an absolute majority of all qualified voters must support the proposal in order for it to become effective if it relates to a constitutional amendment or a dissolution. Statutory proposals are enacted into law by a majority of those voting.

The Diet is the supreme legislative authority. Not only ordinary laws, but constitutional amendments may be enacted by it, the latter requiring for passage the support of two-thirds of a quorum consisting of two-thirds of the entire membership. This body is elected for a term of four years according to the principles of proportional representation. The validity of the elections to the Diet is determined by a tribunal composed of three of its own members and two members of the highest administrative court. Members of the Diet are not subject to instructions from their constituents. One of the most interesting and novel features of the constitution is that which provides for a dissolution of the Diet. This may be effected by action of the Diet itself; by a majority vote of a committee consisting of the prime minister, the president of the Diet and the president of the Council of State; or by a referendum invoked by the popular initiative or by the Council of State. An election must ensue within sixty days after a dissolution, and the new Diet convenes not later than thirty days from the election. Provision is made for one regular session annually and for special sessions called by the president of the Diet on demand of the Ministry, or of one-fifth of the deputies. Ministers are obliged to appear before the Diet or before any of its committees when summoned. They and their representatives have, however, the right of *entrée* on their own account, and may interrupt the order of business at any time to address

the Diet. The Diet may, and on the demand of one-fifth of its members must, institute committees of investigation (*enquetês*) upon any subject. These committees possess compulsory process over all administrative and judicial officials. When the Diet is not in session, the rights of popular representation are safe-guarded against possible encroachment by the Ministry by a permanent committee which possesses the same rights as those of a committee of investigation.

The fourteen provinces into which Prussia is now divided are represented as such in the Council of State. Each is entitled to one member for each 500,000 inhabitants, with a minimum representation of three members, except that Hohenzollern is given only a single representative. Readjustments will be made by the Ministry following each census, or alteration of provincial boundaries. The members of the Council of State are elected according to the principles of proportional representation by the local (usually provincial) diets. Like the members of the Diet, those of the Council of State are not subject to any imperative mandate. After its first organization, the Council of State is summoned at the call of its president, whenever public affairs require. It is his duty to summon it whenever demanded by one-fifth of the members, by all the delegates from a single province, or by the Ministry. The Council of State's relation to the Diet is not that of a coördinate legislative chamber. Its position is comparable to that of the British House of Lords. All laws passed by the Diet must be submitted to it. It has the right within two weeks of expressing its opposition, and may within a further period of two weeks submit its reasons for opposition. These are addressed to the Ministry. In case the Council of State opposes a legislative measure, it is resubmitted to the Diet, and in order to become law must be re-passed by a two-thirds majority. Failing in this, the Diet may, however, invoke the referendum. The Council of State has, moreover, an absolute veto upon any appropriation of money by the Diet in excess of the amount requested in the budget of the Ministry, and in such case the referendum is not permitted.

The Ministry is the supreme executive authority. There is no president of the republic of Prussia. The prime minister, in consequence, is the highest official in the state, and performs many of the functions of a permanent chief executive as well as those of a responsible minister. He is elected by the Diet, and himself appoints the other ministers. He is charged by the constitution with the determination of the general lines of policy, and is responsible therefor to the Diet. The administration of each department is under the direction of the minister at its

head who acts independently in regard to departmental affairs and is individually responsible to the Diet. Collectively the Ministry determines upon the competence of each minister, subject, however, to such regulations as the Diet may enact. It is interesting to observe that, though Prussia is only a member state in the Empire, the constitution makes the Ministry the representative of the state in foreign affairs. It negotiates treaties which, however, require ratification by the Diet when their execution is dependent upon legislation. It submits proposals of law to the Diet which must, however, have first been submitted to the Council of State for its advice. In case the latter does not approve, it has the right of transmitting its opinions to the Diet in writing. The Ministry also submits an annual budget to the Diet. The failure of the Diet to vote the budget does not bring the wheels of government to a stand, as the Ministry is authorized to make expenditures necessary to continue services and undertakings legally established and to issue bonds to the extent of one-third of the budget of the preceding year to supply the necessary funds. The Ministry issues such decrees as are necessary for the execution of the laws which likewise require previous submission to the Council of State for advice. The Ministry is, however, not bound to follow the advice of the Council of State in such matters.

Officials whose functions are of a general and not departmental character, including those delegates to the Federal Council who are not chosen by the provinces, are appointed by the Ministry. The Ministry exercises the power of pardon, but may not pardon a minister convicted for an abuse of his powers, nor grant a general amnesty, nor bar the courts in the trial of crimes. When the Diet is not in session, the Ministry, in agreement with the permanent committee of the Diet, may meet emergencies by issuing decrees having the force of law, provided that they are in conformity to the constitution. Such decrees must, however, be immediately submitted to the Diet for its ratification upon its next assembly.

The Ministry is collectively and individually responsible to the Diet, which can enforce its control through votes of lack of confidence. A proposal for such a vote must be signed by at least thirty deputies. Not until the second day after the discussion on such a proposal has taken place may it come to a vote, but it must be disposed of within fourteen days from its initiation. On such a question the vote is taken by roll-call, thus fixing responsibility upon the individual deputy. An absolute majority of the entire membership is required for passage.

In case the vote of lack of confidence is directed against the prime minister, he may appeal to the people through a dissolution of the Diet, provided he is able to secure the support in this action of either the president of the Diet or the president of the Council of State. The Council of State or the people may come to the rescue of a Ministry which is losing the confidence of the Diet through the initiative demanding a dissolution, and pending the referendum on this question lack of confidence may not be voted by the Diet.

On analysis it will be seen that the Prussian constitution provides for a government of a parliamentary type, but with certain important departures from the British and French models. There is evidence that the framers were influenced to a considerable extent by the government of Switzerland, and have modified the principles of the pure ministerial or parliamentary type of government in the direction of the Swiss system. There is also more than a suggestion of "checks and balances." Fundamentally it is intended to be a thorough-going democracy.

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Constitution of the Far Eastern Republic.[1] The constitution of the Far Eastern Republic, promulgated April 17, 1921, contains ten articles, divided into 184 clauses. There is no preamble. Article I, among other general provisions, sets forth that "The Far Eastern Republic is established as a democratic republic." Article II names the component parts and the boundary lines of the state and undertakes to maintain the rights and obligations formerly Russian within that territory. The subject of Article III is "Citizens and their Rights." Included in the latter are equality before the law; freedom of conscience and speech; habeas corpus; inviolability of person, house, and correspondence; and non-liability to arrest without warrant unless taken in the act. Among rights not usually found in western constitutions are the unrestricted right to strike; uncensored mails, telegraph, and telephone; freedom from corporal or capital punishment; autonomy, within legal limits, for small nationalities and national minorities; and the privilege of any citizen to use his own language in communicating with the government.

[1] English translation by A. Miller, secretary of the mission of the Far Eastern Republic at Peking; published by the *Journal de Pekin*, Peking.

Article IV, on "The Government," devotes a section to the central government, another to the local authorities, a third to the judiciary, a fourth to the state board of control, and a fifth to national self-administration.

The central government is constituted of a legislature, the "National Assembly," and an executive body, the "Government." Both are representative of the people, in whom the sovereignty is vested. The National Assembly is composed of a single chamber, elected from and by all qualified citizens eighteen years old or over upon a basis of proportional representation. With the electoral quota placed at 15,000, the National Assembly should have about 135 members. Sanity and freedom from legal restraint are the only qualifications necessary to mature persons either for voting or for election to the assembly. The duration of an assembly is two years. Two regular sessions are held annually, beginning on February 1 and November 1, and extending at the will of the assembly, provided they do not interfere with the harvest. Extra sessions are provided for. Members are exempt from liability to arrest unless caught *in flagrante delicto;* even then release may be secured by the president of the assembly. The assembly may arrest and prosecute its members.

The legislative power is vested in the National Assembly; in addition to the broad grant of power to legislate concerning "state and social life," there is specific enumeration, as the subjects of assembly action, of the consideration of all treaties, finance,—including the budget, accounts, loans, and concessions not within the exclusive control of the "Government"—, the currency and monetary system, the organization of the armed forces, the control over administration, the granting of amnesties, the declaration of war and the conclusion of peace, and "the determination of other questions at its own discretion." During the recesses of the assembly the "Government" may issue provisional laws dealing with urgent matters; but these require the subsequent approval of the assembly.

The executive, called the "Government," is collegiate, constituted of seven members, qualified simply as voters, elected by the National Assembly for a two-year term. There is no provision to prevent the assembly from electing its own members. The Government is empowered to appoint and dismiss the president of the council of ministers and the comptroller-general, the ministers and their assistants, upon the president's recommendation, certain other officers, and the foreign representatives of the republic; to convoke special sessions of the

National Assembly, to publish the laws and promulgate provisional laws, and to suspend or annul orders of the council of ministers considered not to be in harmony with the constitution or laws. Together, the Government and the council of ministers possess the supreme executive power, being authorized to conduct administration and direct policies, to organize the military forces, to give preliminary consideration to terms of peace, and to defend the state's territorial integrity; to conclude loans, negotiate treaties and grant concessions with the approval of the assembly; to draft the budgets, and to apply, to laws deemed unconstitutional, a suspensory veto which the assembly may over-ride by a two-thirds vote. All acts of the Government, including the promulgation of provisional laws, must be counter-signed by the council of ministers or a minister, whose endorsement carries with it responsibility to the National Assembly. The Government may be prosecuted for high treason by resolution of the National Assembly.

To share in formulating and to administer the policies of the Government and National Assembly, a council of ministers is set up, appointed, as above noted, by the Government. The number and functions of the constituent departments are left to legislative determination. The president of the council, whose position is that of a premier, may hold a portfolio. The qualifications of a voter are sufficient also for a minister; he may be concurrently a member of the National Assembly but not of the Government. The comptroller-general attends cabinet meetings in a consultative capacity. Ministers have the right to appear before the National Assembly "on questions relating to their respective departments." They are oblidged to answer questions and interpellations in the National Assembly. They are held responsible to the assembly for their acts, individually and as a cabinet, and are liable to prosecution by the National Assembly for non-political offences. Upon an assembly vote of no confidence the cabinet must resign.

An interesting sub-section defines four modes of initiating legislation: the first, by resolution of a thousand voters, accompanied by a draft of the proposed law; the second, by the council of ministers as a body; the third, by the Government; and the last, by any five members of the National Assembly.

Five grades of "local" government are provided for: the province, county, urban district, rural district and village; each possessing a considerable degree of self-government, and each required to enforce national law in accordance with the directions of the central government and under the supervision of provincial emissaries appointed by

the central government. Local by-laws may not conflict with the laws of the central government, and are liable to abrogation by the latter.

The government of a province includes an assembly, elected for a two-year term, directly and with proportional representation, and an administration, chosen for the same term by the assembly and authorized to organize departments, eleven of which are specially designated. Coördination is provided for between the ministries of the national and provincial governments.

The province, county, rural district, and village form a descending hierarchy, each rank of which has such jurisdiction over those beneath it as is necessary to the administration of its powers. In addition, cities of 20,000 or more inhabitants form separate counties, while smaller cities form urban districts having the same status and organization as rural districts. In each locality a local elective council is the agency of self-government.

The section on the judiciary begins with the statement: "The People's Court shall be the only court in the territory of the republic." The word "court" is here used in the sense of judicial system. The People's Court is declared to be independent of other government authorities. The number of judges, their qualifications, competence, terms, and procedure are left to legislative determination. Judges are elective and are subject to removal before the end of their terms by the court itself. The jury system is to be employed. Special courts may be organized by statute. Appeals are forbidden, but a court of cassation is provided, empowered to annul the judgments of a lower court.

A "National Board of Control," which is "independent and is directly subordinated within its jurisdiction to the legislative authorities," constitutes a sort of permanent parliamentary commission for the investigation and supervision of the finances of every agency of the government, both central and local, military, civil and commercial. The organization of this body appears to be somewhat cumbersome, composed as it is of a college of state control, a council of state control, a central state board of control, a local department of the state board of control, and a field department of the state board of control. The college and the council of the board appear to have general functions, while the central state board, the local department and the field department deal respectively with the revenues and expenditures of the Central Government, the local governments and the armed forces. Under the local department are "colleges" for each province and county.

Of the members of the central college the workers choose one, the peasants three, and the indigenous autonomous nationalities one; the other members are the comptroller-general and two assistants. The provincial and county assemblies have the right to elect three and two members respectively to the provincial and county colleges, the other members being drawn from the composition of the state board. The powers of the National Board of Control are not final; it may not interfere with the executive branch. Its powers are, however, wide enough to permit the board to secure complete information on the management of every phase of governmental expenditure and thus to equip the National Assembly and the local assemblies for the effective handling of their budgets.

The final section of the fourth article defines the powers of self-government accorded to "indigenous nationalities and national minorities." It provides for a ministry of national affairs, to control and guide such groups. For the Buriat-Mongols, and for such important minorities as the Ukrainians, Jews, Koreans, and Tartars, self-governing assemblies and administrative organs are authorized, and these bodies are to exercise autonomy "in matters pertaining to the national culture" of the minorities represented by them. A definite territory, with boundaries to be fixed by law, and the privilege of national courts in addition to a separate assembly and administraive system are accorded to the Buriat-Mongols. The powers thus given are, of course, subject to the limitation that national law may not be denied precedence.

Article V deals with the "National Economic Organization." It abolishes private property in land, forests, waterways, and their resources. It declares all land to be the property of the workers as a national fund and provides for apportionment of the land with due regard to climate and soil. Except in special cases legally specified, the basis of the right to use the land is to be personal labor. A recent writer has pointed out the interesting fact that the land in Siberia has always been regarded as the property of the government. The latter has granted occupation rights to individuals, but the occupiers have not enjoyed the rights of gift or sale to third persons. The only exceptions to this rule were cities and other municipalities and certain pieces of land specially exempted under laws of 1806, 1822, and 1860 in favor of state officials and Cossacks. In 1916 only about one per cent of the farms and other privately occupied land areas of Siberia were actually owned by their possessors.[2]

[2] Bourrier, "La République d'Extreme-Orient," in *La Chine* (Peking) Jan. 1, 1922.

Work is made an obligation of every citizen. The constitution sets the normal working day at eight hours, the night at six hours. Every worker must have a weekly rest-period of at least forty-two consecutive hours. No person may work before he is sixteen years old; between the ages of sixteen and eighteen his maximum working day is six hours. Except in unusual circumstances over-time is forbidden in all occupations but that of farming. Women-workers receive special protection in several clauses. The government is authorized to establish minimum wages. Workers are guaranteed participation in governmental economic agencies, in government enterprises, and in government control of private enterprises. They are to be protected by a committee for the inspection of labor welfare, elected by the unions, and by insurance against all risks in all enterprises, public or private, the premiums to be paid by employers without prejudice to wages. One month's holiday in twelve is guaranteed.

In contrast with the provisions affecting real estate and natural resources, those respecting movable and immovable property maintain the "inviolability" of private ownership. Leases and concessions are authorized for the development of natural resources, provided they do not exceed terms of thirty-six years. The government is instructed to assist rural development.

The provisions regarding taxation are not unusual. The progressive income tax, property taxes, taxes on title-deeds, inheritance taxes, unearned increment taxes, taxes on gifts, etc., with the revenue derived from state enterprises, constitute the credit side of the national budget.

Article VI is concerned with national defence. "The people in arms are the sole defenders of their own liberty;" and therefore it is provided that there shall be universal military training, so arranged as not to interrupt work, for all male citizens between the ages of eighteen and forty-five. The army consists of conscribed youths of twenty and volunteers legally called for who have reached the age of eighteen.

Education is the subject of Article VII. The republic declares itself to be responsible for a broad education for all citizens, the workers first. Religious teaching is forbidden in all schools, public or private, "following a general curriculum." Education is free and compulsory for all persons of school age. Coeducation is ordained for the government schools. "Labor principles" are to form the unifying basis for all public educational endeavor. The small national groups are authorized to establish language schools.

Article VIII describes the national arms and flag. The arms consist of a red shield having upon it a pine garland, in the center of which is a rising sun and a five-pointed silver star; between the sun and the star, in the center of the shield, an anchor and a pick-axe are crossed over a sheaf of wheat. The letters D, V, and R, for *Dalne Vostochnaya Respublika,* appear to the right, left, and below the garland. The flag also has a red ground quartered to the upper right by a square of dark blue upon which are the letters D, V, and R, arranged in a triangle.

Article IX provides the processes of amendment. Amendments may be initiated by one-third of all the members of the National Assembly in session, by a provincial assembly, by the Government, or by 10,000 voters; in every case they must be ratified by a two-thirds majority of a two-thirds quorum in the National Assembly.

Finally, Article X prescribes that the order and time for the election of the first National Assembly and Government shall be determined by the Constituent Assembly, and lists the president, assistants, and secretaries of the latter body.

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NOTES ON INTERNATIONAL AFFAIRS

EDITED BY CHARLES G. FENWICK

Bryn Mawr College

The Institute of Politics. The second session of the Institute of Politics, held at Williamstown during the month of August, successfully carried forward a distinctive project for the study of international relations. The inauguration of the Institute during the preceding summer, under the auspices of Williams College, was the subject of considerable interest and discussion. Most of those who attended this initial session carried away the conviction that an institution of original and conspicuous merit had been launched. The second session amply justified these expectations. Its record should contribute much to the prestige of the Institute and create additional interest in its constructive purpose.

The method by which the Institute proceeded was substantially the same through both sessions, and consisted of a series of round-table conferences, directed by authorities on various topics, and a course of public lectures delivered by distinguished scholars, publicists, and statesmen, many of whom were from foreign countries. Its membership was largely drawn from men and women on college and university faculties, diplomatic and other government officials, officers of the army and navy, international bankers, editors and journalists. Approximately two hundred members were enrolled this summer and the program provided fourteen round-tables and six public lecturers.

In the course of its development, the Institute was naturally confronted with the problem of maintaining the discussions at the round-table conferences upon an authoritative basis and of fulfilling also an educational function for the membership at large. This dual purpose was in a large measure achieved. Each of the enrolled members attended one, or possibly two, of the conferences as a participating member, and, by a tacit understanding, discussion was reserved to these and to the visiting members who spoke at the invitation of the round-table leader. This arrangement made possible one of the most valuable features of the Institute,—the privilege of members to attend con-

ferences in addition to the one specifically chosen, while the subject-matter of each conference was in the hands of those who had chosen it as a major interest. The lecture courses were open to the members and to the public at large.

The increase in the number of round-tables this session reflected wisely the experience of the previous year. The personnel of the Institute warranted the presentation and study of topics after the manner of graduate seminars, and the success of the undertaking lies perhaps in a continuing emphasis on this idea. The high ability of the conference leaders was supplemented this summer by the presence of a number of participating members who, likewise,were authorities in some special field, and the special reports of these members enhanced the value of the conferences. Certain of the public lecturers, notably Mr. Curtis and Mr. Kerr, Dr. Redlich and M. Recouly, joined actively in the discussion-groups, adding interest and distinction to the meetings. A number of exceedingly able officers of the army and navy were present, and these, together with persons actively engaged in international affairs, constituted an element which the ordinary academic seminar is unable to provide.

The public lectures, although reduced this year in number, retained an important place on the Institute program. In certain instances they set a standard of rare excellence, approaching in a profound and courageous spirit some of the fundamental problems of international politics. Nothing on the program of either session of the Institute surpassed in constructive thinking the addresses of Mr. Lionel Curtis and Mr. Philip Henry Kerr. Other lecture courses were able presentations of the respective topics. The interest and informing quality of a few, however, was impaired by a previous acquaintance on the part of many listeners with certain elementary facts of history. The adjustment of the lecture courses in the general scheme of things at Williamstown remains yet to be worked out. The experience of the past two sessions indicates, however, that the major interests of the members will continue to center in the conferences, except for public lectures of outstanding merit.

The administration of the Institute, conducted by officials and faculty members of Williams College, was efficient in all respects. Courtesies in every relationship were extended to the members and every provision was made to insure the comfort and pleasure of their visit. The hospitality of the college community and of the Williamstown colony gave to the summer gathering a cordial and delightful social aspect.

On the whole, the second session of the Institute was characterized by an intellectual distinction appropriate to its purpose. For a period of four weeks free and vigorous discussion dwelt upon vital problems in international affairs. The purpose and organization of the Institute naturally precluded its official sponsorship of particular aims or policies concerning the problems to which it was devoted. It presented, in contrast, a medium through which the ideas of individuals might be expressed, from a common interchange of which there should issue an influence of singular usefulness and power.

The program of the second session is given below:

Lecture Courses

I. A British Outlook on the International Problem: The Honorable Lionel Curtis; The Honorable Philip Henry Kerr.

II. Modern Brazil in its Political, Economic, and Social Aspects: The Honorable Manoel de Oliveira Lima.

III. The Recent Aims and Political Development of Japan: Dr. Rikitaro Fujisawa.

IV. Nationalism, Imperialism and Internationalism in Europe, an historical survey: Dr. Josef Redlich.

V. The European Situation as seen by a Journalist: M. Raymond Recouly.

VI. Attitude of the Jougoslavs towards the Near East Problem: Professor Michael I. Pupin.

VII. Contemporary Indian Politics: Professor Claude H. Van Tyne.

Round Table Conferences

I. Foreign Policies of Soviet Russia: Leader, Dr. Alfred L. P. Dennis, Washington, D. C.; Secretary, Mr. Emanuel Aronsberg.

II. Problems of Eastern and South Eastern Europe: Leader, Professor Robert H. Lord, Harvard University; Secretary, Mr. Emanuel Aronsberg.

III. The Growth of Canadian Autonomy in the Empire: Leader, Dr. Adam Shortt, Ottawa; Secretary, Miss Margaret Porteous.

IV. State Succession and Peace Treaties: Leader, Professor Jesse S. Reeves, University of Michigan; Secretary, Mr. Lloyd Haberly, Oxford.

V. New Questions in International Law: Leader, Professor George Grafton Wilson, Harvard University; Secretary, Mr. Lloyd Haberly, Oxford.

VI. Central America and the Carribean Area: Leader, Dr. Leo S. Rowe, Director-General, Pan-American Union; Secretary, Mr. William P. Montgomery.

VII. Historical Survey of the Diplomatic Relations of the United States and Latin America: Leader, Dean John H. Latané, Johns Hopkins University; Secretary, Dr. Charles T. Thach, Johns Hopkins University.

VIII. The Pacific Ocean and Its Problems: Leader, Professor George H. Blakeslee, Clark University; Secretary, Professor Henry M. Wriston, Wesleyan.

IX. Modern China, Its Problems and Policies: Leader, Dr. Stanley K. Hornbeck, Washington, D. C.; Secretary, Professor Harold M. Vinacke, Miami University.

X. Japan's Foreign Policy in Siberia and China: Leaders, President David P. Barrows, University of California; Rear Admiral Austin M. Knight, U. S. N.; Secretary, Professor Harold M. Vinacke, Miami University.

XI. The Rehabilitation of Europe: Leaders, Dr. B. M. Anderson, Jr., Mr. Paul D. Cravath, Mr. David F. Houston, Mr. Paul M. Warburg; Secretary, Mr. Henry Mills.

XII. The Problem of Interallied Debts: Leader, Mr. Oscar T. Crosby, Washington, D. C.; Secretary, Professor James W. Bell, Williams College.

XIII. International Commercial Treaties and Policies: Leader, Mr. W. S. Culberson, Vice-Chairman of the Tariff Commission, Washington, D. C.; Secretary, Miss R. M. Ridgway.

XIV. International Journalism and International Electrical Communications Service: Leaders, Mr. Arthur S. Draper, European Manager for the New York Tribune, London, Mr. Walter S. Rogers, Washington, D. C.; Secretary, Mr. Ralph Courtney.

Round-Table Conferences. The subject-matter of certain conferences this year was a logical continuation of topics considered at the session last summer. There was, however, no element of repetition in the proceedings and the six additional round-tables reflected the growth and comprehensiveness of the Institute program. The following notes on the various conferences are necessarily radical condensations, and indicate only some of the more outstanding topics.

International economic problems constituted an important topic on the program. Under the general titles of the "Rehabilitation of Europe," and the "Problem of Interallied Debts," two round-tables

discussed these questions. The Balfour note, published shortly after the Institute opened, came opportunely from the standpoint of these discussions.

Each of the four leaders of the conference on the rehabilitation of Europe brought forward constructive programs for the alleviation of the European situation. There appeared to be a general agreement in these proposals that the following elements are involved in a sound solution of existing difficulties: a rational, economic adjustment of the German reparation problem; the rectification of public finances in Europe and an immediate return to some definite relation of currencies to gold; the elimination of trade barriers in Europe; an adjustment of the interallied debt problem; and, finally, the provision, under proper conditions, for new capital from the United States, Great Britain, and other countries to assist in the industrial revival of continental Europe. Steps towards the rehabilitation of Europe should not await, these leaders asserted, the return of Russia to a condition of reasonable normalcy. Although the restitution of economic life will be incomplete without Russia, that country is by no means essential and much can be done by western Europe and the rest of the world. The problem is in reality one of arresting the further decomposition of Europe.

The question of German reparations was the subject of a special memorandum prepared by Mr. Cravath and concurred in by Dr. Anderson and Mr. Warburg. There should be a moratorium of from three to five years on reparations; the total amount should be reduced to a capital sum not exceeding seven or eight billions of dollars; the amount should be definitely fixed, and payments should be made in moderate installments over a long period of years. There should be no seizure of German railroads, natural resources or industries, or of gold or foreign balances in German banks. Furthermore, if Germany is to develop the volume of export trade necessary for liberal reparation payments irrational tariff barriers must not be erected to deprive her of reasonable opportunities of access to markets of the world.

There can be no sound prosperity in the United States, these conference leaders urged, in the absence of improvement in Europe, and our own economic interests require the coöperation of the United States. In the words of Mr. Houston, "The United States ought not to be afraid to sit around the table and to discuss with Europe all present economic problems." Nothing is to be gained, however, from making large loans to Europe under present conditions. Radical reforms are necessary, first, to give proper security for large loans, and secondly, to make

sure that loans, if made, would really do lasting good. The European situation cannot be solved in piecemeal fashion. Budgets and currencies, reparations, interallied debts, and foreign loans are all so intimately tied together that no one can be handled by itself but they should be adjusted together in one comprehensive settlement.

In a noteworthy address, delivered at the concluding session of this round-table, Dr. Anderson brought forward a series of proposals which Great Britain and the United States, sitting as creditor nations, might make to continental Europe. First, public finances should be balanced by a drastic curtailment of expenditures, including outlays for military forces, and a drastic increase in taxation; floating debts should be funded into long time issues. Secondly, the fluctuating irredeemable paper money should be restored to a gold basis by the resumption of gold payment; pre-war parities are impossible and new and lower gold pars should be established. Thirdly, the numerous trade barriers which the different countries of Europe have established should be eliminated. The reparation settlement noted above was also deemed an integral part of this program.

In consideration of these reforms, Great Britain and the United States ought to be willing to cancel the debts owed them by their continental allies. This does not involve a cancellation of the British debt to the United States. With a revival of continental Europe, this debt can readily be paid. As a further consideration for these reforms, the bankers in the United States, Great Britain and Japan would be ready to place large blocks of new European securities with their respective investors, it being understood that the proceeds of these new loans were to be used for really productive purposes.

To many of these proposals, Mr. Crosby, as leader of the conference on interallied debts, raised a dissenting voice. He suggested for discussion the question as to whether the United States government has the constitutional right to present the wealth of American citizens, taken from them by taxation, to foreign governments through the process of debts cancellation. "Assuming even this power, is there not," he inquired, "a moral limitation to such action, due to the fact that when these funds were raised the public was lead to believe that the matter was one of loans and not of gifts?" In the event of debt cancellation, it would be reasonable to reconsider certain advantages accruing to Great Britain and France under the Versailles treaty which were accepted by the American government on the assumption that the debts in question would be paid. In the opinion of Mr. Crosby,

an extension to the countries of Europe of immediate relief from international obligations would probably encourage the forces of disorder prevailing there and correspondingly retard productive effort. He cautioned against a hasty policy towards allied debts on the part of the United States. Any estimate of the capacity of our debtors to pay is necessarily speculative and a figure now would probably discount the actual resources of Europe. No immediate steps should be taken other than to give the existing debt commission, or some similar body, the function of studying the problem and of acquiring information for the use of the government at some future time. With reference to the proposals to extend loans to European countries on condition of internal reforms, Mr. Crosby doubted if these states would accept such arrangements or abide by them if accepted. Investments under these conditions by the nationals of outside countries would invite government interference and lead to national policies provocative of war.

Economic factors in international relations received further consideration at the conference on "International commercial treaties and policies," conducted by Mr. W. S. Culbertson, vice-chairman of the United States tariff commission. The comprehensive program of this round-table surveyed, first, the tariff treaty policy of the United States with special reference to the interpretation of the most favored nation clause and to the use of the penalty and concessional method. Several sessions were devoted to the study of the development of protection and preference in the British Empire. The growth of autonomy and independence in the self-governing dominions has developed, Mr. Culbertson pointed out, the most elaborate system of tariff preference in the world. These preferences are by some supported on political grounds, but the question constantly occurs whether from an international standpoint these preferential arrangements are consistent with the independent autonomous status of the self-governing dominions. The open and closed door policies were examined in connection with their bearing on the control of raw materials and fuel. A special representative of the United States shipping board discussed the status of American shipping and the purpose of the merchant marine bill pending before Congress. The naval authorities present urged the importance of merchant ships as a vital factor in naval preparedness.

At the concluding sessions Mr. Culbertson submitted a series of recommendations concerning an international commercial policy for the United States. The United States should proceed immediately to negotiate a series of new commercial treaties. With many important

nations we have no such treaties and many of the existing ones are ill-adapted to the new economic and financial conditions of the world today. Our future commercial policy should adopt the unconditional form and interpretation of the most-favored-nation clause. We could thereby insist upon equality of treatment in foreign markets, since concessions in our tariff would be automatically extended to other nations and leave no excuse for discrimination. As a supplement to this treaty policy, the President should be given power to impose additional or penalty duties on the whole or part of the commerce of any nation which discriminates against our overseas commerce. The United States should oppose the further extension of colonial empires unless the extension is accompanied by guaranties for the maintenance of the open door, and should protest any modification or abrogation of existing open door agreement. Mr. Culbertson advocated the calling of an international conference to consider the larger questions of commercial policy.

Two conferences were devoted to certain aspects of the political situation in continental Europe. Dr. Alfred L. P. Dennis led the round-table on the "Foreign policies of Soviet Russia;" while "Problems of eastern and southeastern Europe" were studied at the conference conducted by Professor Robert H. Lord.

Soviet foreign policy in its various aspects was traced by Dr. Dennis from the treaty of Brest-Litovsk to the struggle for recognition at the Genoa conference. This survey embraced discussions on the initial Soviet attitude towards the Allies and Germany; the development of hostility towards the Allies after the spring of 1918; Soviet relations with Poland and the Baltic states; their policies in the Ukraine, the Caucasus, and the Near East; Asiatic policies and Soviet imperialism. Special emphasis was placed on the relationship of Soviet foreign policy to the Communist International and to the program of world revolution.

Soviet policy, it was pointed out, regarded the Allies and Germany with equal disfavor in the autumn of 1917. This balance was upset in the spring of 1918 by a strong resentment towards the Allies, due to the presence of Japanese troops in Siberia and the subsequent allied interventions. The treaty of Brest-Litovsk was regarded by the Soviets as a temporary policy, designed to permit the consolidation of the revolutionary program at home, and in time the apparent concessions to Germany would be regained for sovietism through the force of revolutionary propaganda. Indeed, underlying much of the

surface generosity of Soviet foreign policy is the reserve principle that ultimately, with the coming of world revolution, the concessions made from time to time will be meaningless. In the recognition of the Baltic states this principle was apparently applied or was, at all events, put forward at home by the Soviets to justify these settlements.

The relation between Soviet foreign policy and the Communist International has at times been that of an interlocking directorate. Frequently the same individuals have actively directed both, and the services of the two agencies have been put to the common purpose of world revolution. Since 1921 Soviet policy has diverged somewhat from that of the International and tends to approach the traditional policy of pre-war Russia.

The opening sessions of the conference on problems of eastern and southeastern Europe were devoted to a study of the three Baltic republics, Esthonia, Latvia and Lithuania. They were considered in comparative fashion with respect to area, material resources, racial characteristics and political organization. The size of these republics, Professor Lord observed, compares favorably with many of the states of western Europe and their national self-consciousness, although of recent origin, seems to justify their claim to independence. The strategic position of the Baltic republics has earned for them the title of the "cockpit of eastern Europe," yet the peoples of these regions are free from imperialistic ambitions and eager for peace and stability. Much has been accomplished between the republics in the way of economic rapprochements; and the Treaty of Warsaw, March, 1922, marked the formation of the Baltic League, a protective military alliance. The relation of the Baltic republics to Russia was the subject of special consideration. The interests of Russia in the Baltic lands are commercial, military and naval, and the question arises as to whether in the future Russia will be satisfied with the present arrangements. The opinion was expressed that the Baltic states would not take undue advantage of their mastery of the Baltic ports and would be disposed to make concessions guaranteeing Russia's outlet to the sea.

Discussions at the round-table turned next to problems in southeastern Europe, dwelling particularly on the internal conditions of the states in this region and upon the factors which determine their foreign policy. The outstanding problem of Jugoslavia is the relations between the Serbs, Croats and Slovenes. These three peoples desire a common state, but differ profoundly as to the nature of its political organization. The Serbs have tended towards a unified, central kingdom; the Croats

and Slovenes desire decentralization or federalism. The constitution of June, 1921 was a complete victory for the unitary program, but was adopted through methods of flagrant political corruption at the hands of the Serbian element. There is consequently agitation and need of revision. In Bulgaria since 1919 internal developments, under the leadership of Stambuliski, have moved in the direction of the "Green International," or the dictatorship of the peasantry. Power and office are monopolized by the peasants and the most drastic agrarian reforms outside of Russia have been enacted. Numerous branches of economic life are nationalized and taxation shifted largely to the bourgeois. The general discontent of the educated and propertied classes indicate a latent crisis in the political life of the state. Hungary, the seat of reaction in Europe, is once more officially a monarchy under her old constitution and the regency of Admiral Horthy. The Exclusion Act of November 1921 deprives the Hapsburgs of their rights to the crown, but does not preclude their restoration by election. These internal conditions in Hungary furnish reasons for apprehension on the part of neighboring states. Czechoslovakia, Jugoslavia and Roumania sought safeguards in the Little Entente, with which Poland is now virtually a partner through the Czecho-Polish treaty of November, 1921.

Problems of the Pacific Ocean and the Far East were assigned to three conferences on the Institute program. Professor George H. Blakeslee conducted one on the "Pacific ocean and its problems;" another under the title of "Japan's foreign policy in Siberia and China" was led jointly by Rear Admiral Austin M. Knight and President David P. Barrows; and the third on "Modern China, its problems and policies," was conducted by Dr. Stanley K. Hornbeck.

The islands currently designated as the Pacific mandates were first discussed in Professor Blakeslee's conference. Their relative economic and strategic importance was dwelt upon; the character and achievements of German rule prior to 1914 were compared with the administration by the powers to which the islands were allotted under the mandate principle. From an economic standpoint, the Australian mandate over New Guinea is the most important. In the former German portions of Samoa, however, now under the administration of New Zealand, American trade ranked second in importance until the recent introduction of a preferential tariff on British imports.

The strategic importance of the Pacific islands led to a discussion of naval policy and the Washington conference. Special reports were presented by naval experts showing the effect on naval strategy of the

Washington agreements regarding fortification and naval bases. The modification of American naval power resulting therefrom led the conference into an extensive examination of the political clauses of the Washington treaties as effective means of safeguarding American interests and of promoting peace in Asia.

Subsequent sessions of this conference considered the origin of the mandate principle and the questions in international law arising from its operation. The United States asserted no voice in the allocation of mandates, but claims a legal title in these regions as one of the allied and associated powers. The Yap-mandate treaty was studied in this connection as an expression of the rights claimed by the United States in class C. mandates and recognized by Japan. Possibly this treaty will be used by the United States as a standard in its negotiations with other mandatary powers whose titles are yet unrecognized by the American government.

American insular possessions and certain policies of Australia and New Zealand came within the scope of the conference. An evaluation of American rule in the Phillipines was made and considerations for and against immediate independence were discussed. Expert opinion generally concurred in the advisability of prolonging American rule. Two principles were noted as outstanding in Australian foreign policy; "white Australia," and the maintenance of a British Monroe Doctrine in that region of the Pacific. Both Australia and New Zealand desired to annex the former German islands, and, as mandataries over these areas, their respective policies approach somewhat the original purpose.

The conference on "Japan's foreign policy in Siberia and China," conducted for the first two weeks by Admiral Knight, considered the strategic situation of Japan with reference to the continent of Asia; militarism in Japan and its effects on national policy; and the historical development of Japan's foreign continental policy. The sweep of the Japanese islands from Sakhalin to Formosa dominates the coast and ports of the continent. Command of coast ports involves command of rail and water-ways leading to the interior, making possible the control of extensive interiors rich in economic resources. Partly by design, partly because of fortuitious circumstances, the railroads in which Japan has an interest give a pronounced strategic control of Peking, cutting it off at both north and south. From the military point of view, the power to control ports and to seize railways make it possible for Japan, in the event of war, to occupy all strategic parts of China with effective military forces within thirty days. The racial origins of the Japanese

peoples were next discussed, and their military traditions were shown to provide a logical background for their modern political organization and policy. Japanese continental policy developed rapidly after 1904 with the evident aim at control of Manchuria. Up to this time it was, in general, dictated by necessity, apprehensive of the Russian advance towards the Pacific and concerned with the status of Korea, the control of which is deemed essential to Japanese security. The record subsequent to 1905 is open to serious criticism.

The period from 1905 onward formed the basis of President Barrow's discussions. He placed before the conference a series of thirteen propositions which reviewed in comprehensive fashion the record of Japan in China, Manchuria and Siberia. The proposals communicated by the Japanese military administration in the spring of 1918 to General Horvat at Harbin and to the Russian Far Eastern committee at Vladivostok, to give military aid in return for vast, exclusive concessions in Siberia, reveal an intention to create in Siberia a sphere of interest analogous in character to that sought in Manchuria and Mongolia. Attention was directed to the violation by Japan of the agreement with the United States regarding the strength of forces for the Siberian intervention, and to the action of the Japanese army in transporting commercial goods into Siberia under cover of military shipments, which deprived the Chinese and Russian administration of their established customs dues. Further discussion dwelt upon the occupation by Japanese troops of the Primorsk, the establishment of Japanese civil regime in northern Sakhalin, and the appropriation of Russian mineral properties within these regions.

"The promise of future friendly relations between the Chinese, Russian, Japanese, and American peoples lies," said the conference leader, "in the full and prompt realization of the assurances given by Japan's representatives at the Washington conference, and in the consummation of the policy of withdrawal announced by the present Japanese administration."

The conference on "Modern China, its problems and policies" discussed the resources and geography of China; the problem of education; constitutional and political development in China since 1911; the development of foreign rights and interests within the empire; the open door policy; China at the Washington conference; international consortiums and financial problems.

Up to the time of the Washington conference, Dr. Hornbeck explained, attempts had been made to limit the scope of the open door

policy to the Hay circular of 1899. In reality the doctrine includes the pronouncements made by the American government up to 1904. While it is true that the original Hay note recognized the existence of spheres of influence and sought only an equality for the commerce of all nations within these areas, the American secretary soon discovered that the preservation of Chinese territorial integrity was essential to his purpose and expanded the policy accordingly. The open door is a traditional American policy, given application by Secretary Hay, and attempts to project the spirit of the Monroe Doctrine into the Far East. The principle of a Japanese Monroe doctrine for Asia breaks down when Japan attempts to build up exclusive interests in China.

The fundamental political problem in China today is the conflict between centralization and local autonomy. The Chinese aptitude is for local government, and many feel that provincial autonomy must precede national reconstruction. The process may require a generation, but greater prospects will attend its development from below than would follow a centralized dictatorship. A substantial part of China's gain at the Washington conference lies in the possibility now afforded for the development of local institutions without the impact of foreign influence.

The conference on the "Diplomatic relations of the United States and Latin America" was conducted by Dean John H. Latané of Johns Hopkins University. Chief emphasis at this round-table was placed on the evolution of United States policy towards Latin America, and the method of treatment was largely, though not exclusively, historical. The South American wars of liberation was the first topic discussed, and the respective attitudes of the United States and Great Britain towards this movement were studied from both the legal and the political points of view. An historical study was next made of the formulation of the Monroe Doctrine. The impetus to the enunciation of this policy proceeded from a European source, namely, the activities of the Holy Alliance, and the discussions of this topic were introduced by a review of the contemporary European situation. The three lines of diplomatic activity that led to the formation of the doctrine were considered in detail: the Rush-Canning negotiations, the negotiations with Russia, and the principles of the Holy Alliance. It was further sought to develop the respective policies of Jefferson, Madison, Adams and Clay, and to evaluate the relative merits of the adoption at this time of a strictly American doctrine as opposed to a general doctrine applicable to all the world. Finally, considerable time

was devoted to an analysis of the doctrine as originally enunciated, and to its applications and official interpretations. The question of the maintenance of the Monroe Doctrine was investigated and the relation of its maintenance to the existence of the European balance of power.

Later sessions of the conference studied the three main phases of the expansion of the United States to the south and the southwest. Final sessions were devoted to Latin America and the World War. Reasons were sought for the action of the several Latin-American states in entering the war, breaking diplomatic relations with Germany, or remaining neutral. Special attention was directed to the relation of these respective policies to the general question of Pan-Americanism, in order to determine the extent to which the solidarity of the states of the two continents was injured by their failure to act as a unit in this time of crisis.

The conference on "Central America and the Carribean Area," conducted by Dr. Leo S. Rowe, studied the more recent political developments in this region. Following a review of the expansion of the United States in this area, an examination was made of the various treaties and conventions existing between the United States and the Carribean republics. American administration in Haiti and the Dominican Republic was the subject of several sessions, and authorities on this subject described various aspects of the American regime. The movement towards federation was considered through a study of the 1921 constitution of the Federal Republic of Central America.

The Mexican question was introduced by an historical outline of events since the Diaz regime. American policy towards Mexico during this period was considered in relation to its effect on internal affairs in Mexico and on the broader issue of Pan-Americanism. Mexico under General Obregon was the concluding topic, with special reference to provisions in the constitution and laws of Mexico which have thus far precluded recognition of the Obregon government by the United States.

The conference on the "Development of Canadian autonomy in the empire" was conducted by Dr. Adam Shortt of Ottawa. In the main a two-fold division of the subject was followed. First, the development of constitutional autonomy with respect to domestic matters was studied, and, secondly, attention was directed to the growth of autonomy with reference to foreign affairs. The leader presented first an historical resumé of the factors which retarded the development

of constitutional autonomy. A detailed study was next made of the development of responsible institutions. After a period of political tutelage it was reserved for Lord Elgin to shift the responsibility of government to Canadian leaders, and to assume in Canada the position of the King in England. Responsible government was soon afterwards established in all the provinces and the country obtained in essence and in fact entire control of all its domestic affairs.

The logical development was now towards autonomy in the control of external affairs. To this topic the conference devoted subsequent sessions, tracing the growth of autonomous control over such subjects as the tariff, exchange, shipping and immigration. Unfettered by written agreements, the central Canadian government has been able to share in the complete flexibility and re-adjustment of the British constitution as it pertains to the status of the self-governing dominions.

International legal questions were studied at two conferences, one on "State succession and peace treaties," conducted by Professor Jesse S. Reeves, and the other under the title of "New Questions in International Law," with Professor George G. Wilson as leader.

Questions connected with state succession are essentially justiciable, Professor Reeves observed, and are admirably fitted for determination by the International Court of Justice. The period from 1648 to 1914 had been largely one of unification and absorption of states, and international law writers had studied the problem from that viewpoint. The World War introduced, however, a process of disintegration. Two types of succession states emerged: the peace treaty states, such as Poland and Czechoslovakia, and the non-treaty states represented by Finland and the Baltic republics. With respect to the former states, the treaties themselves may be studied as the source of rights and obligations, but with the latter states international law will decide the questions.

The treaties of the allied and associated powers with the succession states of the former Austro-Hungarian empire were the subject of reports relating to the status of pre-war treaties, the allocation of public debts, and the adjustment of private property rights. Other sessions of the round-table were devoted to a study of the principles of state succession which would probably apply to such areas as the free city of Danzig, the Saar Basin, and the mandate territories. Where rests the legal title to such areas; what is the allegiance of their inhabitants; what are the legal rights and duties of the mandatary powers in the various classes of mandates?

Final discussion dwelt on the status of Soviet Russia from the standpoint of state succession. Does there come a point in the territorial disintegration of a state where the final remainder definitely breaks with the treaty obligations of the past? Is there ground for the claim that Soviet Russia bears to old Russia a relationship analogous to that of Finland or the Baltic republics? Upon this assumption the repudiation of debts need not follow, for each succession state might be apportioned an equitable share of the old obligation. Questions of this nature, it was suggested, should be worked out prior to the recognition of new states emerging from such backgrounds.

Professor Wilson opened the conference on "New questions in international law" with a review of the origin and organization of the International Court of Justice, followed by a discussion of the nature and scope of its jurisdiction. The question was raised as to the enforcement of the decisions of the court, which led to a consideration of sanctions. Public opinion has not always been effective and its real merit has diminished with the extensive use of propaganda. Economic pressure, international police, and written guarantees were in turn discussed with respect to their value and practical application. Sanctions to be effective, it was emphasized, should possess certainty and adaptability, and should, if possible, be made automatic.

The growth of populations and the setting up of state barriers has made immigration a matter of international concern. Questions as to the right to migrate and the obligations of a state to receive aliens have multiplied. The recent law of the United States restricting immigration was considered in this connection and its ethical justification discussed. Emigration, it was pointed out, rarely affords a solution to the problem of surplus population, but results often in an increasing birth rate in the country from which the emigrants come.

Succeeding sessions were devoted to the questions arising out of the operation of the mandate principle; the revival of the doctrine of angary during the World War; and concluded with a survey of the Washington conference treaties in their relation to international law.

"International journalism and international electrical communications service" was the subject of the round-table conducted by Mr. Arthur S. Draper, and Mr. Walter S. Rogers.

Under Mr. Draper's leadership, the conference discussed the organization of propaganda; the work of news gathering agencies and special correspondents; the influence of governments on the press; and the press as a factor in international relations. All newspapers except a

very few are dependent upon news agencies for national and international news. Consequently, the organization, practices, and standards of the agencies are matters of public concern. It was recognized that Reuters in England, Havas in France, and the Wolff agency in Germany were to a large extent government news distributers. It was the sense of the round-table that governments should take no part in the collecting and carrying of news, but should leave this function entirely in the hands of private agencies.

There is urgent need, Mr. Rogers said, for international agreements regarding electrical communication facilities. At present the United States is the only country not owning or operating entirely or in part its telegraphic services, which fact makes it largely impossible to develop world-wide telegraphic relations similar to that provided in a related field by the Universal Postal Union. The development of radio has introduced additional problems which require attention.

BRUCE WILLIAMS.

University of Virginia.

NEWS AND NOTES

Personal and Miscellaneous

EDITED BY FREDERIC A. OGG

University of Wisconsin

The program for the Chicago meeting of the American Political Science Associaton, December 27–29, includes sessions devoted to international political science, political conditions in Europe, psychology and politics, theory, administration, and the relations of the executive and legislative branches of government. The session on international political science will deal with the scope and subdivisions of the subject, its relation to political and diplomatic history, international law as law for law students, and international law in its relation to constitutional law and government. Another session is given to political conditions and party politics in Europe, especially in England and Germany, radical parties, and proportional representation and its effect on parties. The program committee thinks it desirable each year to consider one of the other sciences in which there are developments of interest to the field of politics; this year it will be psychology, with particular consideration of the behavioristic studies. The session on theory will be devoted largely to a further discussion of the pluralistic theory. Two sessions will be occupied by the presentation and discussion of reports by the committee on political research appointed at the last annual meeting. The committee believes that the importance of the subject justifies a demand for time and full consideration by the members of the association. In the session on administration there will be papers on administrative law and the organization of administrative tribunals, and on the developments in the system of administration in England and France. Copies of the program will be mailed to members early in December.

Professor Thomas H. Reed, formerly of the University of California, has accepted a professorship of political science at the University of Michigan and will devote attention exclusively to municipal government. Professor R. T. Crane will henceforth give his time principally to political theory.

Dr. Paul S. Reinsch, formerly minister to China, was appointed, during the summer, financial adviser to the Chinese government and left for the Far East in July. He was accompanied by Professor S. Gale Lowrie, of the University of Cincinnati.

Mr. Milton Conover has left the staff of the Institute for Government Research to accept a position in the department of political science at New York University.

Dr. Chester Lloyd Jones, formerly of the University of Wisconsin, has accepted an appointment as commercial attaché at Paris.

Mr. George C. Robinson, recently a graduate student at Harvard University and the University of Wisconsin, has been appointed professor of government in Iowa State Teachers College.

Professor W. J. Shepard, of Ohio State University, gave two courses, American government and political theory, in the summer session of the University of Minnesota.

Mr. J. Dayton Voorhees has been promoted from instructor to assistant professor of history and politics in Princeton University.

Dr. Raymond L. Buell, who received his doctor's degree in politics at Princeton University in June, is occupying a tutorial position in the division of history, government, and economics at Harvard University.

Mr. Walter L. Whittlesey has been appointed instructor in history and politics in Princeton University.

Professor J. S. Young, of the University of Minnesota, gave courses in political science in the summer session of the University of Washington.

Drs. R. E. Cushman and Quincy Wright have been promoted to full professorships at the University of Minnesota.

The Bureau of Research in Government of the University of Minnesota has brought out a study on "City Charter Making in Minnesota" by Dr. William Anderson, director of the Bureau.

Dean Charles Andrews Huston, of the Stanford University Law School, died at his home in Palo Alto, in July, 1922. Dean Huston was not only a leader in the education of the legal profession, he was also a legal philosopher and a profound student of public affairs. His contribution to the teaching of political science at Stanford was very important. He gave in the law school the courses in international law, administrative law, and municipal corporations.

Professor E. A. Cottrell, Stanford University, delivered six lectures on municipal government at the National School for Commercial Secretaries, held at Northwestern University August 21 to 26, 1922.

The Second Western Summer School of Community Leadership was held at Stanford University, September 18–23, 1922, under the auspices of the department of political science of Stanford University, the California Association for Commercial Secretaries, and the American City Bureau. Some of the lecturers and speakers were: Charles H. Cheney, expert on city planning; Chester H. Rowell, a member of the California railroad commission, formerly editor of the Fresno Republican, member of the U. S. Shipping Board, etc.; C. A. Dykstra, secretary of the Los Angeles City Club, formerly secretary of the Civic Federation, Cleveland, and of the City Club, Chicago; Francis J. Heney, public leader; Ray Lyman Wilbur, president of Stanford University and president of the American Medical Association.

The League of Calfornia Municipalities held its annual meeting at Stanford University September 19 to 22, 1922, the guest jointly of the university and the city of Palo Alto.

The United States tariff commission has issued under the title *Handbook of Commercial Treaties* a useful contribution to the study of commercial treaties and tariff agreements. In addition to treaty texts, there is a comprehensive analysis of the stipulations contained in the commercial treaties of all nations.

The Illinois constitutional convention completed its work September 12, when the proposed new fundamental law was delivered into the custody of the secretary of state for submission to the voters at a special election set for December 12. The vote on adoption was seventy-seven to one. A million copies of the instrument were ordered printed and

sent to the voters. The most important change made in the final draft was the revision of the judicial article applying to the supreme court. The tribunal is increased from seven to nine justices, three of whom are to come from the Chicago district. The six downstate districts remain as they are.

A committee of citizens of Greater Boston, composed of George H. McCaffrey, executive secretary of the Boston Charter Association, Richard B. Hobart, Professor Arthur N. Holcombe of Harvard, Mary Tenney Healey, Mrs. Winona Osborne Pinkham, executive secretary of the Boston League of Women Voters, and Lawrence G. Brooks, has undertaken an intensive proportional representation campaign in preparation for the next session of the legislature, when a general permissive proportional representation bill for Massachusetts cities will probably be introduced and the porportional representation bill for the Boston city council introduced again.

In Belgium the use of the list system of proportional representation has been extended during the past year to the election of the provincial councils of the nine provinces and to the election of the portion of the Senate which is chosen indirectly by the provincial councils. The other members of the Senate and of the Chamber of Deputies have been elected by proportional representation since 1899.

William Archibald Dunning. On August 25, Professor Dunning passed away, after a lingering illness following his collapse in February of this year. Professor Dunning was born in Plainfield, New Jersey, in 1859. He received the degree of bachelor of arts from Columbia University in 1881; from the same institution the master's degree in 1884 and the doctorate in 1885. The forty years of his academic life were spent in Columbia, where he was successively fellow, lecturer, instructor, adjunct professor and professor. Since 1913 he had occupied the Lieber professorship of history and political philosophy. The degree of doctor of laws was conferred upon him in 1904 and doctor of letters in 1916. His leadership in scholarly work was evidenced by the double honor of the presidency of the American Historical Association in 1913 and of the American Political Science Association in 1922. His presidential address was to have been given at the December meeting of the latter association.

Professor Dunning's work was crowned with unusual success in three fields, as a teacher, as an editor, and as a scholar in the fields of history and government. As a university lecturer, Professor Dunning was a marvel of lucidity and keenness, and left an ineffaceable impression upon the hundreds of students who attended his courses during the long period of his academic career. He was equally notable in his power to interest and encourage students in special fields of inquiry, and in his many encouraging contacts with those who had passed out from the university halls as students. The hundred volumes of the Columbia publications in history, economics and public law are full of acknowledgements of his friendly interest and counsel in the development of scholarly studies. His students published in 1914 *Studies in Southern History and Politics* as a testimonial to his inspiring work in this field, and a volume in the history of recent political theory has been in preparation by another group of his students for a year or more.

He was one of the active group of editors of the *Political Science Quarterly* from 1890 to the time of his death, and managing editor from 1894 to 1903. His discriminating judgment and his editorial care and skill were significant factors in creating and maintaining the high standards of a periodical notable in the field of political science. Ten years of his life were largely occupied with this exacting labor, wearing upon the editor but immensely useful to his collaborators in the field of government.

The contributions of Dr. Dunning to productive scholarship were made in the fields of American history and political theory, and particularly in the latter field. His doctoral dissertation was on *The Constitution of the United States in Civil War and Reconstruction* (1885). This was followed in later years by his *Essays on the Civil War and Reconstruction*, published in 1898, and *Reconstruction, Political and Economic*, a volume in the American Nation Series. In 1907 with Frederick A. Bancroft he edited *The Reminiscences of Carl Schurz* (1907–17). In 1914 he published a very remarkable survey of Anglo-American relations under the title of *The British Empire and the United States*.

His outstanding contribution to the study of political philosophy was his *History of Political Theories, Ancient and Mediæval* (1902), with the succeeding volumes, *From Luther to Montesquieu*, (1905), and *From Rousseau to Spencer*, (1920). These lucid and scholarly accounts of the development of systematic political thinking quickly superseded the earlier works of Bluntschli and Janet, and became the standard histories of the evolution of political thought, the indispensable guide for

all serious students of formal political philosophy. Perhaps the most striking characteristic of this *opus magnum* was its dispassionate and objective quality, its detached point of view. Few men of equal ability have been able to resist the temptation to formulate an independent system and advance a dogmatic philosophy. In the final chapter of the concluding volume this attitude developed into a form of pessimism, which was not however characteristic of the study as a whole. No one in the last generation has done more than the author of these volumes to advance the study of formal political theory, and to prepare the way for the increasingly intensive study of the evolution of the political mind.

Finally, it may not be amiss to say that Professor Dunning was in the true sense of the term a noble man, as well as a great scholar, and that his personal qualities endeared him to all who came within the bright circle of his acquaintance. He combined in unusual manner great keenness of mind with rare tolerance and breadth of sympathy. Spirited and witty in conversation, he never allowed the scholar to overshadow the man. In his benevolent rôle in his favorite haunt in the Century Club, he became almost an institution.

The departure of Professor Dunning in his sixty-fourth year is a heavy blow to American scholarship. With the death of Lord Bryce, a former president of the Political Science Association, this year marked the passing of two preëminent figures in the field of history and government. While their walks in life were far apart and their types of experience widely different, yet they had in common many intellectual characteristics. In both there was a sympathetic understanding of all types of thought; in both a quality of facile and lucid expression; in both an aversion to dogmatic conclusions. In both there was a strain of weariness and pessimism at the end, but the lives of both radiate inspiration and cheer to those who seek the truth in the troubled maze of political events.

CHARLES E. MERRIAM.

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BOOK REVIEWS

EDITED BY A. C. HANFORD

Harvard University

International Relations. By JAMES BRYCE (Viscount Bryce). (New York: The Macmillan Company. 1922. Pp. xii., 275.)

Near Eastern Affairs and Conditions. By STEPHEN PANARETOFF. (New York: The Macmillan Company. 1922. Pp. 216.)

Russia's Foreign Relations During The Last Half Century. By SERGIUS A. KORFF (Baron Korff). (New York: The Macmillan Company. 1922. Pp. 227.)

The Williams College Institute of Politics was brilliantly inaugurated in the summer of 1921 in a series of lecture courses and "round-table discussions" conducted by men whose high international reputation was based upon wide knowledge and illustrious action. A mark was set which can hardly be surpassed in subsequent years. The authorities of the college have wisely arranged that persons who could not be present might read the lectures in the form in which they were delivered through their publication as promptly as possible in convenient volumes of uniform appearance. At the time when in America a gradual subsidence of the passionate distortions of war-time threatens to be followed by cynical apathy and contemptuous aloofness from the burning problems of an agonized Old World, these thoughtful treatments provide information, stimulation, and a foundation for hope. The three authors here discussed, though from widely separated regions in Europe —an English scholar, traveler, and statesman, a Bulgarian educator and diplomat, and a Russian historian and teacher—are singularly alike in breadth and fairness of mind, freedom from rancor, and conservative liberalism.

Baron Korff explains the relations of Russia with her neighbors from 1878 until 1914, with some reference to events since the latter date. His plan of treatment is geographical, taking up in order the Russian dealings with France, England, China, Japan, Austria-Hungary, the Balkans and Turkey, Germany, and Sweden; the last chapters

summarize the whole and discuss in no approving way the methods and results of secret diplomacy. The treatment is very clear and direct. Little is mentioned that can be considered new, but the point of view gives freshness of interest—the events introduced are discussed as seen by one inside Russia, visualizing and criticising her statesmen and Tsar as actual personalities, and sympathizing with many of her aims and policies. It is evident from the start that the lecturer is strongly opposed to autocracy, bureaucracy, and the falseness and intrigue of much recent European statecraft. He cannot forgive republican France for lending the old Russian government after the defeat by Japan money which was used to repress constitutionalism. Though he believes that loan to have ensured the triumph of the Entente in the Great War, he feels that if it had been conditioned upon increase of Russian popular liberties, Russia might not have been wrecked in the struggle. He does not appear to blame Germany, or indeed any one power, as having primarily caused the war (on this point the three writers are in agreement). He certainly gives too much weight to German influence when he affirms that in the Young Turkish revolution of 1908 "everything was accomplished exclusively through German help and German inspiration" (p. 136); the power of German propaganda in Sweden is also overestimated (p. 170). A few other statements are inexact, as that General Roberts firmly established British rule over Afghanistan (p. 33), that the German landing on the Kwantung peninsula in 1897 was "simply for the purpose of egging Russia on" (p. 63), and that during the conference at Portsmouth, American sympathy swung from the side of Japan to that of Russia (as a result of Count Witte's capable dealings with the press, p. 88). There is more repetition than seems necessary.

Baron Korff's solution of the problem of secret diplomacy is to have preliminary conversations secret but in no sense binding, while all binding agreements are to be discussed publicly and ratified by representatives of the people. He acknowledges the difficulty of doing this, pointing out that President Wilson himself attempted to force through the Versailles treaty as a *fait accompli*, already made binding in the process of secret negotiation.

Mr. Panaretoff employs a topical arrangement in his lectures, giving a historical sketch of the Balkan Slavs, describing church organization, literature, education, government, and Turkish reforms, and concluding with a brief discussion of the policies of European powers in the Near East, and a sketch of recent Balkan history. Although his time range

extends over some fifteen centuries, the treatment is sufficiently skilful to avoid all dryness or appearance of merely cataloging facts. The impartiality and strict adherence to truth shown are truly remarkable in a native of the Balkan peninsula. Serbs, Greeks, and Rumanians might honestly look at some of the facts presented from a different angle, but it would be difficult to find among them any writers who would treat Bulgaria as fairly as Mr. Panaretoff treats their countries. In short, his point of view is not Bulgarian or Balkan, but Anglo-Saxon.

The material is much less familiar than most of that presented by Baron Korff, since it deals with remoter times and lands and a wider range of human activities. The descriptions, anecdotes, and quotations are clear, interesting, and apt.

Mr. Panaretoff bears no ill-will even toward the Turk, the oppressor of his ancestors, but gives as much explanation and justification of Turkish policy and action as the facts permit. In fact, the question is presented whether by more disinterested western European influence and action, the emancipation of Greece and the other Balkan states might not have been accomplished with less war and bloodshed, through autonomy proceeding gradually toward freedom (pp. 182, 183).

The last chapter is largely taken up with a presentation of the Bulgarian defense of their actions during the last ten years, showing that the unjust settlement of 1913 was the direct reason for Bulgaria's attitude in the Great War, and pointing out the failure of the treaty of Neuilly to provide, by conforming Balkan boundaries to nationality, a fair basis for permanent peace.

Lord Bryce's lectures here presented are almost the last public work of his extremely long and useful life. The scope of the subject and the number of topics introduced fit it to be the ground-plan for many detailed studies by lesser men. A large number of major questions which go to the foundation of human organization and collective action are here helped toward solution as sketched with summary completeness and excellent proportion by a master's hand. The book shows no dimming of the mental eye or failure of effective literary expression.

First is presented the broad outlines of past inter-tribal and international relations. The criticism may be made that as the result of an education concentrated strongly in the classical age (allusions to which, by the way, are a marked feature of the book), all the time before the Roman unification of the Mediterranean civilization is contemplated

as one indifferentiated period of confused warlike relationships without thought of established peace, whereas in that time also, and extending it cannot be said how far back, there were international relations of peace as well as of war, and problems of close similarity to those of today. The second lecture traverses the results in the Old World of the Great War. The treaties of 1919–20 are accounted very imperfect—more so than those of 1814–15. Economics as influencing world politics is then considered; Lord Bryce is no devotee of the "economic interpretation of history;" and he believes, that the less governments have to do with high finance the better.

Causes of war are discussed broadly. Here as in a number of other places, the lecturer falls back into disillusioned, it might almost be said, pessimistic views; he feels that international friendships are founded on almost nothing but self-interest, and are apt to cease when common interest disappears. The lecture on diplomacy aims to condense for the use of younger men the experience of Lord Bryce's own service; diplomacy is stated to be now chiefly useful to inform and advise home governments. As for international law, "Each belligerent will probably disregard in war the engagements it has made in peace, and will use every means of attack physically possible;" nevertheless international law has some value.

Democratic control of foreign policy is dubiously regarded. How can the people obtain knowledge, and how can they act effectively. An increase of popular participation is however possible, and may become very useful. Conferences and congresses, arbitration and conciliation are discussed frankly as methods for settling international controversies. Alliances are held to be dangerous, and the superstate impracticable and undesirable at any time in the near future. The possible remedy is a combination of civilized states for the purpose of preventing war. When examined, Lord Bryce's proposal differs little from the organization of the present League of Nations, which indeed he recommends, subject to revision of the Covenant (pp. 260, 261). He would not guarantee existing boundaries, but provide a machinery for revising them where objectionable.

Lord Bryce agrees with Mr. Panaretoff that the Balkan settlement of 1919 is unjust to Bulgaria and leaves the situation unimproved. He is not as tolerant toward Turkey as Mr. Panaretoff, being evidently still very much filled with horror at the Turkish treatment of the Armenians. He is unreconciled to the continual presence of the Turkish government in Europe and to the possible failure in establishing an

independent Armenian state. He inclines to the view that Russia will probably work out of her present deplorable situation gradually, and not through further destruction and bloodshed. The blackest cloud of all in threats to European peace he sees to hang above the Rhine.

Two or three inaccuracies may be noted. The German devastation in northern France during the retreat of 1918 cannot rightly be counted the outstanding cause of continued French resentment (p. 44); perhaps the devastation of the spring of 1917 is intended. It is not the case that Adrianople was left to the Turks by the Treaty of Sèvres (p. 67). The text seems to affirm that the American Constitution was adopted as primarily a commercial union (p. 85). It is commonly held that the "Concert of Europe" in regard to Near Eastern affairs began after 1815, and was not created by the Congress of Berlin (p. 208).

All three volumes are provided with indices. Baron Korff's has a short table of contents, and Lord Bryce's one that is analyzed. The editing is careful. A few awkward constructions have been overlooked in the books by non-English writers. Baron Korff gives some bibliographical lists without specific references.

ALBERT HOWE LYBYER.

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The Washington Conference. By RAYMOND L. BUELL. (New York: D. Appleton and Company. 1922. Pp. xiii, 461.)

The Washington conference is presented from the viewpoint of the international situation in the Far East, with a militaristic Japan as the central figure. The first third of the book deals with "the forces in the background"—Japanese encroachments upon China and Siberia, the Japanese Monroe Doctrine, and the Anglo-Japanese Alliance. An appendix contains the conference treaties and agreements.

The volume is well written, a wide range of excellent source material has been used, especially of recent foreign newspapers, and the footnotes are extensive. On the other hand, too sweeping, and occasionally quite unjustified, statements are sometimes made, such as: "the American Delegation . . . . misrepresented the actual achievements of the Conference to the American public" (p. 325); "the almost complete ignorance of the Siberian Question" on the part of the conference and the American delegation (p. 314); and "the policy of the American Delegation. . . . . (in regard to the Far East) was uniformly 'pro-Japanese'" (p. 322).

As to the results of the conference, "it failed almost entirely" in everything relating to the Far East (p. 325). Imperialist Japan, it is contended, was in control of the Orient when the conference opened; the Naval treaty, by its prohibition of further fortifications or naval bases on certain Pacific islands, made it impossible for the United States alone to interfere with Japan; while the Four Power Treaty prevented joint action by Great Britain and the United States (pp. 313–314); with the result that the conference actually "strengthened the position of Japan" (p. 327). This failure of the conference is the thesis of the main part of the volume. To establish this contention, reliance is placed upon an unusual interpretation of the Four Power Treaty, which, it is said, "constituted a pledge that Great Britain and the United States would not jointly interfere in the Orient" (p. 177). The admission is made that the American delegation may not have "realized the exact import" of the treaty and that the meaning contended for was not brought out by the microscopic examination made by the Senate (p. 182, footnote).

Had the author given a more objective discussion of the results of the conference, presenting the differing viewpoints, his book might well have been the standard work upon the conference as a diplomatic world event. As it is, it must be placed in the class of controversial publications. It is of genuine value, however, for its collection of widely scattered material, and its clear, discriminating picture of the far eastern background of the conference, and the international situation; and interesting for the reasoning by which the author makes a failure, in large part, of the conference which majority opinion regards as one of the most striking of American successes.

G. H. Blakeslee.

Clark University.

The New German Constitution. By René Brunet. Translated from the French by Joseph Gollomb. Foreword by Charles A. Beard. (New York: Alfred A. Knopf. 1922. Pp. xiv, 339.)

Dr. Charles A. Beard, in an interesting preface, declares this volume to be "the best treatise on the German constitution which exists in any language." This may well be true though the reviewer has not yet seen the recent works by Anschütz and Meissner, but it does not seem to be such high praise as the book deserves. The early commentaries

on the German constitution by such writers as Stier-Somlo, whom Dr. Beard mentions, Giese, and Purlitz, were scarcely more than reprints of the text with notes on the politics of the Revolution and references to the debates in the constitutional convention. They gave little or no consideration to such topics as the real character of the parliamentary system which the new constitution sets up, the nature of the responsibility of the ministers, or the extent of the discretionary authority of the president. They threw little light on the actual process of legislation or of administration that might be expected under the new government. It was not possible for them to throw much light on such matters as the place of the supreme judicial court or of the economic councils in the new scheme, for the working of those institutions will depend upon the laws by which the provisions of the constitution are carried into effect. Indeed a striking feature of the new constitution is the large number of subjects with reference to which the constitutional provisions are incomplete and must be supplemented by further legislation. No adequate treatise was possible when the earlier commentaries were written. And so it would seem higher praise to say that M. Brunet's book, having regard for the circumstances under which it was written, is a thoroughly good book.

It contains much that American students of government wish to know and suggests many topics for further study. It properly treats the constitution of August 11, 1919, and the supplementary legislation as a single body of constitutional laws. It interprets the provisions dealing with the frame of government in the light of the experience under the Bauer and Muller cabinets, and never permits the reader to forget that it is a government, and not a document, that he is examining. It summarizes the reasons for the adoption of sundry variations upon the parliamentary form of government, as developed upon the continent of Europe prior to the German revolution, which distinguish the new constitution. It makes clear the fact that, like all practical constitutions, this is the creature of contention and strife and bears upon its face the birthmarks of inconsistency and compromise. These are especially conspicuous in the second part, which deals with the fundamental rights and duties of the German people. As Dr. Beard ingeniously suggests, if one should underscore the socialist sections with red, the Center clauses with yellow, and the capitalist phrases with black, one would have an interesting study in constitutional artistry.

But much remains to be done before the new German constitution can be properly understood. What, for example, will be the power

of the supreme judicial court with respect to unconstitutional legislation? The statement has been made that no power to declare laws unconstitutional has been granted to the judiciary. This statement may be true, so far as the constitution of August 11, 1919 is concerned, if restricted to laws passed by the National Assembly. State legislation however, if found by the national judiciary to be in conflict with the national constitution, may certainly be declared unconstitutional. And perhaps national legislation also. The answer depends upon the construction to be given to the second part of the constitution. Are the rights and duties of Germans, there solemnly set forth, to be regarded merely as so much good advice, which the National Assembly may accept or reject as it thinks fit? Or may the supreme judicial court, when created, and meanwhile the constitutional senate, protect the citizen in the enjoyment of his constitutional rights? Certainly some of these rights, such as that of the independent agricultural, industrial, and commercial middle classes to protection against oppression and exploitation (Art. 164) are hardly susceptible of enforcement in the courts of law. In other cases the event is not so clear. M. Brunet rightly makes no attempt to answer such questions.

A. N. Holcombe.

Harvard University.

The American Party System. By Charles Edward Merriam. (New York: The Macmillan Company. 1922. Pp. x, 439.)
The Economic Basis of Politics. By Charles A. Beard. (New York: Alfred A. Knopf. 1922. Pp. 99.)

In the first of these books Professor Merriam, the author of *American Political Theories* and *American Political Ideas* writes of American political practice. He presents an analysis of our party system, dealing, as he says in his preface, "with the structure, processes and significance of the political party." Professor Merriam is not only a "politician of the chair," having a good knowledge of our political history and being a close observer and student of current party conduct; but he has also had practical experience in party contests and processes in the second largest city in America. He knows his subject at first hand, having learned it by the laboratory process. His studies and experiences especially qualify him to present this study on American political parties.

In the early chapters of the volume the author deals with the composition, leadership and organization of parties, showing their connection with party policies, principles, traditions, habits and antecedents. He shows the relation to party strength and conduct of certain classes, races, sections and creeds; he points out the qualities of certain personalities and "magnetic" leadership, and the influence of the professional group of politicians for concerted action. He shows the numerous and varied factors that determine party membership and allegiance. The cohesive force of the professional group "tends to master the party rather than serve it," but it is checked by an insurgent faction or the fear of party revolution.

Four chapters are given to the influence of the spoils system on our party life. The author discusses this system in a broad way in its relation to our legislative, administrative and judicial life; in its relation to contracts, taxation and public funds and to the "underworld" with its power to levy tribute on vice and crime in return for immunity from the law. Very interesting chapters are given to the causes of the spoils system and to the boss, the outcome of the system; in these chapters are discussed the qualities and causes of the boss; his methods; his knowledge of popular psychology; his relations to organized labor, to "big business," to political reform; the sources of the boss' power; the social conditions that produce him and the various types of the boss that have appeared in American politics.

There is a brief sketch of our historical American parties, with a fair judgment of their merits and services. The summary is brought down to 1920, a campaign year which, as Professor Merriam very truly says, decided no specific issue but which presented a singular complex of racial and class and personal factors which had equal right to the credit and fruits of victory.

The campaigns of one hundred and thirty years are briefly analyzed and it is shown that out of thirty-two historic contests in only sixteen were clear-cut political issues presented to the voters while sixteen other contests were settled on traditional and personal grounds.

Minor parties are properly appreciated, and it is shown that some third parties have been the forces that have developed issues and have greatly modified and determined the history of parties; while other minor parties, like the Anti-Masons, and the Know Nothings, have merely raised suggestions that have "passed into the limbo of forgotten things."

Party nominating systems and the relation of parties to elections, the party primary with evidence for and against its existence, party

slogans, methods of campaigning, party rallies, barbecues and demonstrations, ways of winning votes and influencing opinion, nicknames and terms of derision, state factions, kickers and bolters, financing the party and legal regulation of campaign funds,—these and many other party topics are considered in due place and form. The volume has a chapter on the theories of the party system and closes with one on the nature and function of the party. There is thoughtful observation here, together with political philosophy, party history, and practical politics.

On the whole, Professor Merriam's volume contains an excellent summary of the elementary facts of the American party system. Its index does not cite all the topics of which its pages treat, such as the anti-saloon league, the league of women voters, the farm federation, etc. The volume is compact with information, not "as lively as fiction," but interesting and valuable to the inquiring student and the alert citizen. It would be hard to think of an essential feature of our politics and parties on which information may not be found in this volume, all of it put forward in logical order and clarity of expression.

The author of the second of these books, Professor Charles A. Beard, writes for the open minded. He is a pioneer, not a routineer, in his historical and political writing. He may be somewhat disturbing to conservative superstition but in that he renders a distinct service. His little book *The Economic Basis of Politics* consists of four lectures given at Amherst College in 1916 on the Clark Foundation. The essayist first deals with the doctrines of political philosophers, including chiefly Aristotle, Locke and the American statesmen Madison, Calhoun and Webster, whose writings are used to show that the underlying forces in politics are based on property and the struggle of classes for the possession of property.

In the second lecture on "Economic Groups," Professor Beard further fortifies his thesis that there is an intimate relation between property and political opinion and conduct. Men's political conduct and group associations are determined by what they have or fail to have, or by what they want of material things, not by abstract thinking or convictions in men's hearts and minds about tyranny, liberty and the rights of men.

The essay on the "Doctrine of Political Equality" introduces the conflict with this basic theory of politics, wherein the rule of the people is seen to be struggling with the rule of the estates. In his final essay on the "Contradiction and the Outcome" the author finds that in the

field of politics the struggle that is going on for relief or control, is between conflicting interests,—a landed interest, a transport interest, a railway interest, a labor interest, a shipping interest, etc., and the solution is still with the Sphinx.

Those who are students of history, like Professor Beard, and those who know his historical contributions on the economic history of the Constitution and of Jeffersonian democracy, will not quarrel with his contention that our political doctrines are often in conflict with the actual facts in our political life, and that it is only a delusion and a snare to think that politics deals merely with abstract men divorced from economic interest and group sentiment. These virile essays will interest all students of politics and history.

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The Supreme Court in United States History. By CHARLES WARREN. Three volumes. (Boston: Little, Brown and Company. 1922. Pp. xvi, 540; x, 551; x, 532.)

These volumes are useful, enlightening, absorbing. They trace the relation between the Supreme Court and the history of the United States. They do this in several ways. They tell who have been suggested for judgeships. They give the peculiarities, partisan views, and judicial record of the appointees. They state the essential facts and surrounding circumstances and ultimate decisions of the most important cases. They present the comments of newspapers and of politicians. They do all this in an approximately chronological order; but now and then they turn aside to point out by way of generalization the apparent trend of decisions and their relation to political and economic phenomena.

The author deserves praise for originality, thoroughness of investigation, fairness of spirit, and clearness of expression. His book is the result of vast research. The foot-notes teem with citations. Hundreds of these deal with easily accessible material, such as law reports, well-known magazines, and biographies; and other hundreds deal with old newspapers, manuscripts, and other sources which could not have been found without unusual labor.

The quotations are chiefly restricted to the comparatively inaccessible material; and as they are inserted for the purpose of proving the prevalence of opinions, or at least the expression of them by an

appreciable number of newspapers or politicians, they very properly abound in cumulative repetitions.

One of the results of reading these volumes carefully and especially the quotations—must be grave disrepect for the expressions in which newspapers and politicians have indulged and still induge; for the repetitions create a suspicion that there is little individual thinking, and the frequent reversal of expression in accordance with changed partisan needs enlarges the suspicion into a conviction. If any reader has had enthusiasm for any past or present political party, these volumes hold for him a sad enlightenment. Yet that enlightenment will create no disrespect for the members of the Supreme Court of the United States. On the contrary, it will create great respect for them. Study of the decisions shows that when the court cannot agree, the disagreement of the judges does not, as in the instance of newspapers and politicians, habitually follow a partisan line.

As the author has been writing as a philosophical historian, he has been compelled to have in mind a theory wherewith to test the growth of facts. He has had indeed two theories, one that the judges of the national court inevitably tend to emphasize the national power rather than the state power, and the other that a great feature in the history of the Supreme Court has been the emergence from generation to generation of new groups of problems. The two theories are consistent, and they are amply upheld by the facts. That federal judges, irrespective of party, recognize the nationalistic intent of the Constitution, and simultaneously attempt to respect the functions of the states, has been shown for more than a century, to the confusion of such dreamers as lazily divide judges into loose-constructionists and strict-constructionists. That each generation has had its own new group of problems is equally true. With approximate accuracy it can be said that in the first third of the nineteenth century the Supreme Court had two tasks—one the task of demonstrating that according to the constitutional limitations cautiously created by the people of the United States the judges have the duty to protect the individual against the use of unbridled power by the executive and legislative departments, and the other the task of insisting that, though nation and state co-exist and must exercise their respective functions, nevertheless within the terms of the Constitution the nation is paramount. Further, in the second third of the nineteenth century the task was to prevent the Constitution from clogging, by the contract clause or otherwise, the development accompanying the rise of railways and of factories. Finally, in the last third of the nineteenth

century the tasks—not yet carried to completion—were to ascertain the respective limits of the states and the nation under the Fourteenth Amendment and the commerce clause.

The period covered is 1789–1918; but the author explains that the detailed discussion ends with 1888 and that for the subsequent thirty years, well remembered by many of his readers, he has given only a broad outline.

As the author addresses his book to all persons, whether lawyers or laymen, who are interested in history or in government, it is obvious that he has been compelled to lay emphasis upon constitutional problems and to omit most of the decisions, however important, which deal exclusively with the lawyer's work in contracts, torts, criminal law, and the like. It is obvious too that he has been under the temptation to humor the layman's habit of over-emphasizing the Chief Justice as distinguished from the associate justices. Yet he has not gone to excess in these directions. He knows well that the greater part of the court's work deals with questions not distinctly governmental; and, as he appreciates the importance of the non-governmental cases, he has been quick to perceive the instances where, as in Swift v. Tyson, such cases have actual bearing on the relative spheres of state and nation (II, 362–365). Similarly, he knows the standing of associate justices, and he does proper honor to them, although he carefully and properly refrains from narrating that in the greater part of the period from 1789 to 1918 the members of the Supreme Court bar would not have called the Chief Justice the ablest member of the court—especially as regards non-governmental topics. Indeed, the great lesson of these painstaking volumes is that all members of the court have conscientiously and skilfully coöperated and that for this reason, notwithstanding personal shortcomings and occasional erroneous decisions, this complicated piece of human machinery has accomplished successfully the unprecedented duty of building upon the basis of a brief document a system of political doctrine covering manifold relations of the individual and the state and the nation.

EUGENE WAMBAUGH.

Harvard Law School.

The Life of John Marshall. By ALBERT J. BEVERIDGE. Four volumes. (Boston and New York: Houghton Mifflin Company. 1916–1919. Pp. xxvi, 506; xviii, 594; xxii, 644; xviii, 668.)

Life of Roger Brooke Taney. By BERNARD C. STEINER. (Baltimore: Williams and Wilkins Company. 1922. Pp. 553.)

Although the dictum that the history of the world is written in the lives of its great men may not command universal assent, there will be little dissent from the statement that the history of the Supreme Court of the United States is to a large extent embodied in the lives of its chief justices, especially during the period before the Civil War. Both Marshall and Taney have had other biographers, but the two substantial works under review constitute by far their most thorough and notable biographies.

Although the authors of these volumes undoubtedly have a keen appreciation of the great merits and accomplishments of their respective subjects, neither biography has any resemblance to an uncritical panegyric. Marshall's shortcomings—his slovenliness of dress and undignified demeanor while off the bench and his lack of legal erudition—are recognized. Marshall could be stern when the occasion demanded, but his customary geniality and affability won him friends everywhere and in all walks of life. It was somewhat paradoxical that the great Chief Justice, who was preëminently conservative in his political beliefs, should have been so democratic in his personal associations. It is recorded that his only personal enemies were Jefferson and Spencer Roane, judge of the Virginia court of appeals, whom Jefferson would probably have appointed in Marshall's place, had it become vacant.

The publishers' words of extravagant laudation require much less qualification in the case of Beveridge's work than they usually do. His elaborate and painstaking account makes Marshall stand out as a man of flesh and blood. The work is not a treatise on constitutional law as found in Marshall's opinions, and mere legal discussions are avoided. But the work supplies the historical setting and the political background which make his opinions on great constitutional questions much more vivid and intelligible to the general reader. Especially thorough and detailed are the accounts of the circumstances surrounding the decisions in Marbury v. Madison and the Dartmouth College case. The author gives Marshall credit for raising the court from a position of slight public regard to one of great dignity, authority, and influence.

His dominating position in the court is attributed to his ability to imbue others with his own ideas, unconsciously to themselves. It is pointed out that he introduced the custom of announcing, himself, the views of the court instead of the delivery of opinions by the justices *seriatim* (III, 16). His great influence in upholding the integrity of the federal courts against the attacks of the Jeffersonians and in moulding the development of our constitutional law in accordance with his ideas of nationalism is fully described. The only criticism of Beveridge's work which the writer would make is that his lack of sympathy with the party of Jefferson is very ill concealed, and the latter's public services do not seem to be fully appreciated. To Beveridge, Jefferson is merely an astute politician, in contrast with Marshall, the jurist and statesman. A truer estimate is that made by Professor Corwin, who, in his *John Marshall and the Constitution*, points out that each of these men was necessary in order to correct the bias of the other, and that "Jefferson's emphasis on the right of the contemporary majority to shape its own institutions prevented Marshall's constitutionalism from developing a privileged aristocracy" (p. 55).

In contrast with Marshall, Taney, as Steiner shows, abandoned the practice of making the Chief Justice the organ of the court in delivering opinions, because, upon constitutional questions, the court lacked cohesion (p. 191). Steiner takes up Taney's constitutional opinions chronologically and gives a running comment on the cases. He sometimes gives first a summary of the criticisms of contemporaries and later the facts and circumstances of the case. Clearness would probably be improved by a reversal of this order of treatment. Steiner does not hesitate to criticise some of Taney's opinions, as, for example, that in the Wheeling Bridge case and especially in the Dred Scott case. The treatment of the latter case is very full but does not give one the impression of being altogether dispassionate. Its value, however, is not thereby appreciably impaired. As the author points out, although the advent of Taney marked a transition to a stricter construction of the Constitution, he was not always on the side of state rights, as was illustrated in the case of Holmes v. Jennison (p. 213).

Both of the biographies under review display wide investigation and thorough scholarship and their authors have performed a great service for students of American constitutional law and history.

JOHN M. MATHEWS.

University of Illinois.

The Nature of the Judicial Process. By BENJAMIN N. CARDOZO. (New Haven: Yale University Press. 1921. Pp. 180.)

Seldom in a similar space will a student of legal institutions find so much of interest as in these lectures of Judge Cardozo. With a wealth of knowledge and a felicity of practical illustration the author outlines the influences which actually mould the judgments of appellate courts. He draws aside the veil of judicial sanctity, and shows that judges have their views determined by all the influences which control their judgment as men and as lawyers. The author's point of view is illustrated by the following quotation: "Deep below consciousness are other forces, the likes and the dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convictions, which make the man, whether he be litigant or judge. . . . . There has been a certain lack of candor in much of the discussion of the theme, or rather perhaps in a refusal to discuss it, as if judges must lose respect and confidence by the reminder that they are subject to human limitations. I do not doubt the grandeur of the conception which lifts them into the realm of pure reason, above and beyond the sweep of perturbing and deflecting forces. None the less, if there is anything of reality in my analysis of the judicial process, they do not stand aloof on these chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do. The great tides and currents which engulf the rest of men, do not turn aside in their course, and pass the judges by" (pp. 167–168).

Judge Cardozo limits his discussion almost entirely to the relatively small number of cases "where a decision one way or the other, will count for the future, will advance or retard, sometimes much, sometimes little, the development of the law. These are the cases where the creative element in the judicial process finds its opportunity and power" (p. 165). The number of these cases is actually not small, when we include within it (as we must) the body of cases dealing with questions of constitutional and statutory construction; and these cases have an importance out of proportion to their number.

Judge Cardozo's attitude toward the various forces influencing judicial action is illustrated by the following quotation, "My analysis of the judicial process comes then to this, and little more: logic, and history, and custom, and utility, and the accepted standards of right conduct, are the forces which singly or in combination shape the progress of the law. Which of these forces shall dominate in any case,

must depend largely upon the comparative importance or value of the social interests that will be thereby promoted or impaired" (p. 112). Judge Cardozo properly assumes that in appellate courts the eccentricities of individual judges are not so important, but tend to balance each other in the long run.

It is impossible in a brief review to do more than call attention to the excellence of this little book. Those who do not read it will miss a stimulating contribution to the discussion of our legal institutions.

W. F. DODD.

Chicago.

The Modern Idea of the State. By H. KRABBE. Translation and introduction by George H. Sabine and Walter J. Shepard. (New York: D. Appleton and Company. 1922. Pp. lxxxi, 281.)

In 1906, Professor Krabbe of the University of Leyden wrote *Die Lehre der Rechtssouveränetät* and in 1915 and 1917 further elaborations of this earlier volume which are now put forth under the title of *The Modern Idea of the State.* The translation is the work of Professors George H. Sabine and Walter J. Shepard, who have also written an elaborate introduction to the volume.

Professor Krabbe's work was reviewed in an earlier number of this journal and therefore will not be discussed in great detail on this occasion. Krabbe's study is a protest against the absolutist theory of sovereignty, and a constructive attempt paralleling those of Preuss and Duguit to provide a substitute theory. The substance of his doctrine is that the basis of the modern state must be sought in the sense of right (Rechtsgefühl). The process of modern political development is essentially the substitution of a spiritual power for personal authority. The spiritual nature is the source from which spring real forces and "these forces rule in the strictest sense of the term. . . . . There is only one source of law—the feeling or sense of right which resides in a man and has a place in his conscious life." Both state and law are the creatures of this "Rechtsgefühl" which may be regarded as the adequate substitute for sovereignty and the ultimate basis of political obligation.

The translation is happily done and its makers deserve special praise for avoiding the atrocities often unwittingly committed by linguists who are innocent of the vocabulary or concepts of jurisprudence, politics and philosophy. The industrious translators have somewhat

less happily prefixed an extended introduction to Professor Krabbe's work. In the main this is a running interpretation of the author's work, but it is difficult at times to know whether the preface is intended as a free interpretation of Krabbe or as the independent views of Sabin and Shepard. It is an admirable preface but altogether out of proportion to the length of the body of the book and would have been better placed as an independent treatise. Students of political theory will hope that Professors Shepard and Sabine, jointly or severally, may in the near future develop their interesting views on political theory much more fully on the basis of the hopeful beginning here made.

CHARLES E. MERRIAM.

University of Chicago.

Johan Sverdrup. AV HALVDAN KOHT. Vol. I. (Christiana: H. Aschehoug and Company. Pp. viii, 522.)

The history of the development of responsible government in Norway centers around the life and work of Johan Sverdrup. When the Norwegian peasants, stimulated by the revolutionary movements of 1830, attempted to seize control of the government by electing members of their own class to the Storthing they often found their majority rendered powerless by a cabinet responsible to the king alone. Several of their leaders, notably C. G. Ueland, realized that herein lay the crux of the situation, but they were unable to secure a change. Sverdrup became the organizer of the victory for democratic principles. Imbued with the liberal ideas of the forties he strove for a government "for and by the people." He considered the task too big for the efforts of one class; rather it required the marshalling of the liberal sentiment of the entire nation.

The present volume covers about twenty years of Sverdrup's parliamentary career (1850–1869). Professor Koht relates the story both of the statesman's early life and of his pioneer work in creating a strong liberal party. It is a history of Norwegian politics during eventful years which reveals the struggle for political democracy in the far north as a part of the great movements which then swept Europe.

Short of stature, with black hair and a swarthy complexion, in speech rapid, fiery and emotional, Sverdrup seems un-Norwegian in everything except his love of liberty. The family was indeed of foreign origin; but for more than two centuries it had been closely identified with various progressive movements in Norway, and an uncle, Professor

Georg Sverdrup, won the gratitude of the nation by his services in 1814. Johan Sverdrup was also deeply influenced by the great poet of Norwegian liberty, Henrik Wergeland. Strongly nationalistic, he took no interest in the agitation for a union of the three northern kingdoms and opposed the pro-Danish policy of Charles XV during the crisis of 1862–1864.

Professor Koht is a careful, scientific historian, and he has succeeded in keeping the various threads of his story well in hand. The style is clear and in places vigorous, but it fails to convey the impression of finish and elegance produced by writers of an older school.

PAUL KNAPLUND.

University of Wisconsin.

Railroads and Government. By FRANK HAIGH DIXON. (New York: Charles Scribner's Sons. 1922. Pp. xvi, 384.)

No one can leave Professor Dixon's book without feeling that the war hastened, rather than caused, the important changes in administrative policy and organization made by the Transportation Act of 1920. The emphasis upon revenue needs, and the relationship of revenue to credit conditions, which furnish the principles of the rule of rate making, appeared in the 1910 advance rate cases, and again in the rate level cases of 1914, 1915, and 1917. Dissatisfaction with the administration of the long and short haul clause led to a clear statement, in the act, of principles the commission had haltingly pronounced. The breakdown of the Newlands Act, clearly apparent when passage of the Adamson Law was forced, indicated the need for new machinery for the adjustment of labor disputes. Demonstration of the existence of problems of this character is the task of the first section of the book—"Federal Regulation, 1910–1916."

The war period (section two) is largely treated as an episode apart. During the war the continuous movement of men and materials to the seaboard was the problem faced by the transportation machinery. Federal control Professor Dixon justifies by a demonstration of the inadequacies of the competitive system. The subsequent organization, the steps taken to secure unification and economies, the labor policy—these elements of the broad problem he presents with some elaboration and much sympathy. The railroad administration, however, has lacked a charitable treatment of its activities, and such protest as may be made on that score should be registered against utilizing the

director general's statement as a summary of the achievements of his organization.

In the third section of the book, "The Return to Private Operation," is given a study of the first year's workings of the regulatory system created by the Transportation Act. In this section are discussed rate regulation (including such matters as the rule of rate making, the suspension power, the amended long and short haul clause, the power to fix minimum rates); service regulation(car service and terminals); and the regulation of management. Under this last heading may be included the regulation of wages and working conditions, as provided for by the creation of the labor board; the regulation of securities; the consolidation of railroads; the power to fix depreciation rates; and the "recapture" of excess earnings.

The book was written as a narrative, and as a narrative it should be judged. This form of treatment has obvious limitations. If Professor Dixon had not told us that he had written "with teachers primarily in mind," the subordination of stiff reasoning to narrative interest could be forgiven the more easily.

HOMER B. VANDERBLUE.

Northwestern University.

Government and Industry. By DELISLE BURNS. (New York: Oxford University Press. 1921. Pp. 315.)

As a result of studying actual happenings with open eyes and open mind, Mr. Burns has written an extraordinarily suggestive book, packed with heretical truths. He drops the old idea of "interference" on the scrapheap, and with a wealth of illustration, drawn chiefly from British experience, develops this thesis: A new conception of the organized economic community is becoming operative, a community that is neither the state alone, nor the non-governmental organization of industry, but a unique complex of the two. The state enlarges its direct economic activities, and at the same time develops a series of administrative offices, non-political in function, that concern themselves either with organizing the relations between the parties who produce and distribute goods or with organizing the material and financial conditions of industry.

The state thus becomes an integral part of the economic system, and brings over into that sphere the conceptions (1) of a community with common goods and (2) of public service. "Government in its

economic functions is changing the bases of habit and belief upon which rest the operation of the 'natural' laws of pure economics." In each particular situation the state and industrial organization are accordingly on trial to determine their relative serviceability, and the new economic community tends more and more to be dominated by the idea of use, not profits.

Mr. Burns recognizes that government represents economic groups, but he refuses to make that fact the whole of political science. He does not see the existing political structure as in process of being destroyed and replaced by a new industrial government, but regards the present state as being fitted into a scheme which views and organizes industry as the public service of the economic community. He offers cold comfort to either the idealizer or the absolutist, whether in politics or in economics, but he gives to the honest student a body of facts and ideas to ponder on that will mean in most cases a remarkable enrichment of intellectual furniture. Why must we usually go to England for such work?

H. R. Mussey.

Wellesley College.

BRIEFER NOTICES

James Mickel Williams is the author of *Principles of Social Psychology* (pp. xii, 459) published by Alfred A. Knopf. He deals with social phenomena from the standpoint of the conflict of interests which shows itself in economic, political, professional, family, cultural and educational relations. Students of political science will be most interested in his chapters on "Political Rivalry of Economic Interests," "The Rivalry of Party Organizations," "The Conflict of Attitude among Political Leaders," and "Suppressed Impulses and Their Reactions in Political Relations." In this latter chapter he points out the dangers that arise from undue political repression and concludes that, "The democratic state must . . . . provide for that free expression of opinion, and that quick adjustment by governmental action that insures a minimum of unrest due to politically suppressed impulses. To reduce suppression to a minimum and thus facilitate the development of personality is precisely the essential reason for political freedom" (p. 417).

In *Des Sciences Physiques aux Sciences Morales*, by Jacques Rueff (Paris: Librairie Felix Alcan, pp. 202), the author has undertaken to

demonstrate that there is the same scientific application of mathematical laws and reasoning to the moral as to the physical sciences, and advances a mathematical theory of economics, with some discussion of what is called Euclidean and non-euclidean morals and economics.

The Political Institutions and Theories of the Hindus, by Benoy Kumar Sarkar (Leipzig: Markert & Petters; pp. 242), deals with the constitutions and political philosophy of ancient India, covering a field unknown to most Americans. Parts of the work have been presented as lectures in several American and European universities, and published in various journals, including two articles in this REVIEW.

The Principles of Revolution, by C. Delisle Burns (Oxford University Press, pp. 155), is a discussion of revolution not as an act of violence but as the peaceful introduction of a new order; it is an analysis and exposition of certain ideals and influences which, in the opinion of the author, work not towards destruction but towards important changes in society. There are chapters on such topics as "Rousseau and the New Social Order," "Karl Marx and Revolution," "Mazzini and the New Nationalism," "William Morris and Industry," "What is Revolution?" and "For and Against Revolution." Those who have read Mr. Burns' other books, such as *Political Ideals* and *Government and Industry*, will find the same keeness of analysis and depth of thought in this book.

Political Ideas of the American Revolution, by Randolph Greenfield Adams, Durham, N. C. (Trinity College Press, pp. 207), is not concerned with the ordinary political philosophy of the Revolution such as natural rights, the social compact and the like but is rather a study of the Britannic-American contributions to the problem of imperial organization during the years 1765 to 1775. The author finds in the writings and speeches of leading thinkers of that period the idea of imperial federation which is at the basis of the present-day British Commonwealth, and concludes that the question of American independence might never have arisen but for Britain's insistence that it was impossible to distribute authority and at the same time retain sovereignty.

George Bryan and the Constitution of Pennsylvania, 1731–1791, by Burton Alva Konkle (William J. Cambell, pp. 381), is a comprehensive and scholarly account of the part played by one of the most important

political leaders of Pennsylvania during the Revolutionary and early state periods. The author explains how Bryan was largely responsible for the Pennsylvania constitution of 1776, with its unique provisions for a single-chambered legislature and council of censors, and his defense of this constitution for the next fifteen years against the attacks of those who wished to establish a more complete separation of powers. He also shows how Bryan was the author or co-author of most of the vital laws and precedents adopted by the executive, legislative and judicial branches of the state, through his services as vice-president of the supreme executive council, member of the legislature and judge of the two highest law courts; and how he secured the adoption of the Pennsylvania law for the abolition of slavery in 1780.

A *History of the Constitution of Minnesota*, by William Anderson and Albert J. Lobb, has been published by the University of Minnesota (Studies in the Social Sciences, no. 15; pp. 323). This is the first of a series of monographs planned by the bureau of research in government; and gives a comprehensive and intensive study of the early history of the territory and state, the convention and constitution of 1857, and the later amendments, with a series of documents as appendices.

The Pardoning Power in the American States, by Christen Jensen (The University of Chicago Press, pp. vii, 143), is an exhaustive analysis and criticism of one of the functions of the American state executive which has hitherto received comparatively little attention from political scientists. After tracing the history of the pardoning power in the colonies and the organization and methods of state pardoning authorities in general, the author devotes a chapter to a more detailed discussion of the power of pardon in some half dozen of the western states. There is also a carefully written chapter on the legal aspects of the pardoning power with citation of numerous cases. As a result of his investigation the author concludes that throughout the American states in general there has not been evolved a systematic method to be used as a basis for granting or refusing clemency, and secondly that "governors are not specially fitted to be the final arbiters of clemency as they are in many states." For the first defect he recommends the standardization of pardon procedure under which a stable policy would be developed in each jurisdiction, while for the latter defect he would give the final power to a full-time board rather than to the chief executive.

In *The Constitution of the United States: Its Sources and Application* (Little, Brown & Co., pp. xix, 298), Thomas J. Norton has taken up the federal Constitution clause by clause explaining the meaning of each clause, the historical circumstances out of which it arose and its application to actual cases. The result is a non-technical and readable account of the Constitution, not as a dry-as-dust document but as a living force. It should be especially useful to the average citizen, to new voters and to students desiring an elementary knowledge of American constitutional government. In a few instances somewhat misleading impressions are left such as the explanation that the Twelfth Amendment was adopted because the original provision in regard to the election of the President and Vice President gave rise to conflict of opinion and consequent want of harmony within the administration (pp. 105–106), and the idea that the prerogative of the House in regard to money bills is of great importance (pp. 34–37). There is a useful table of the leading constitutional cases with a brief note as to the significance of each and two large charts, one showing our governmental history prior to the adoption of the Constitution and the other the present form of national and state government.

The Building of an Army, by John Dickinson (The Century Co., pp. 398), describes in a comprehensive manner and with scholarly perspective the processes by which the United States, with a regular force of only 100,000 on April 1, 1917, placed more than 3,000,000 men under arms in about a year and a half; and also contains a chapter on the Army Act of 1920 and a discussion of the essentials of American army policy. The material presented is based largely upon a study of the statutes, official reports, general orders of the war department, and records of hearings before congressional committees, and is a discussion of the political as distinguished from the technical military aspects of army building. Mr. Dickinson is of the opinion that the hope of our future preparedness and policy of military legislation lies in the strengthening of voluntary organizations like the state militia, summer training camps and military schools, and the devising of better ways whereby the technical skill in the regular army may touch and influence these voluntary organizations.

Shall it be Again? by John Kenneth Turner (B. W. Huebsch, pp. 448), is an attempt to prove that we entered the World War "in the interest and at the direction of high finance, and at all stages to the

prejudices of the general welfare." It is not only an impeachment of American motives for going to war but is also an attack upon the policies and activities of President Wilson, a defense of Germany and a criticism of the treaty of Versailles.

The story of the American Red Cross work in Belgium during the years 1917–19 is told in a terse and interesting fashion by John van Schaick Jr. in a book entitled *The Little Corner Never Conquered* (Macmillan Co., pp. 282). The writer was for almost two years the Red Cross Commissioner to Belgium and his account is therefore authoritative as well as interesting.

The Myth of a Guilty Nation, by Albert J. Nock (B. W. Huebsch, pp. 114), is a challenge to the basic assumption of the Versailles treaty that Germany was entirely guilty of starting the war. A good many persons may agree with Mr. Nock in regard to the terms of the treaty but very few will be convinced by his opinion that the economic, diplomatic, and military activities of the Allies preceding 1914 were the causes of the war. The author believes that the causes underlying the present unsettled state of affairs in the United States and Europe are inherent in the terms of the treaty and "the only thing that can better our own situation is the resumption of normal economic life in Europe; and this can be done only through a thorough reconsideration of the injustices that have been put upon the German people by the conditions of the armistice and the peace treaty."

Germany in Travail, by Otto Manthey-Zorn (Marshall Jones Co., pp. xi, 139), is a scholarly analysis of the state of mind in present-day Germany as expressed in its literature, drama, music, religion, schools and universities. Although the author is concerned chiefly with the spiritual forces operating in Germany, the first eighteen pages give a very clear resumé of recent efforts toward political readjustment. The volume is the outcome of a half-year's leave of absence granted to the author by Amherst College for the purpose of studying at close range conditions in Germany.

Reconstruction in France, by William MacDonald (Macmillan Co., pp. viii, 349), is a comprehensive and readable account of the progress of restoring the devastated portions of that country, the problems of

financing this work and the administrative machinery and private organizations set up for this purpose.

Gambetta and the Foundation of the Third Republic, by Harold Stannard (Small, Maynard and Co., pp. vi, 266), is a thorough account of Gambetta's public career. His early family life and the story of his only romance are also touched upon briefly. The book is mainly a critical, yet defensive, study of Gambetta's policies during the opening years of the Third Republic. The difficulties that beset Gambetta while Minister of the Interior at Tours, and which he in so large measure overcame, are vividly described; and the wonder is not that there was so much criticism and opposition but that Gambetta accomplished so much real good in spite of it all.

Immortal Italy, by Edgar A. Mowrer (D. Appleton & Co., pp. 418), is a Sunday supplement account of Italy since 1870 by a newspaper man. The very title shows the author's irresistible impulse to use headlines. There is a great deal of worthwhile information about Italian politics during the war, the socialists and Facisti, and a clever account of D'Annunzio's expedition, all told from a slightly radical standpoint, but Mr. Mowrer's attempt to write history is not altogether a success.

The history, geography, art, literature and the present problems of Roumania are discussed by Charles Upson Clark in his book on *Greater Roumania* (pp. 477) published by Dodd Mead & Co. The author is an ardent advocate of Roumania and is anxious to give all the information possible. Sometimes this leads him into giving too many statistics at a dose or too long a list of authors with naught to remember them by, but in general the book shows the good lecturer that the author is, and certainly attains its purpose of interesting the reader in Roumania.

Alfred E. Zimmerman has given us his impressions on post-war conditions in a somewhat popular book entitled *Europe in Convalescence* (Putnams, pp. xiii, 237). He believes that a solution of the present "perplexities and complications can be found in one way alone, along the simple and well-tried road of the old Concert of European Powers" and that for this purpose the "goal of all good Europeans . . . . should be to work for the establishment of relations of mutual confidence between Britain, France and Germany." As a beginning he is of the opinion that the claims upon Germany should be reduced, and that to

make this possible England should renounce her reparation claims in favor of France. This should be accompanied by a pledge on the part of England to aid France in the case of external aggression. In other words a firm Anglo-French understanding is regarded as the best basis for an Anglo-French-German reconciliation.

The Organization of a Britannic Partnership, by R. A. Eastwood (Longmans, Green and Co., pp. xi, 148) is a clear, concise and readable account of the development of dominion self-government and of those forces which, in the author's opinion are making necessary a readjustment of the relations between the United Kingdom and the dominions. The new machinery suggested by the author for regulating the affairs of the empire include an annual imperial conference of the dominion premiers to consider general policies; the appointment of resident dominion ministers who would be available for continuous consultation during the years intervening between the meetings of the imperial conferences; and the amalgamation of the House of Lords as a court of appeal with the judicial committee of the Privy Council so as to create a new supreme court of appeal for the empire which would bring about uniformity in the interpretation of both imperial and dominion law. Federation is rejected for practically the same reasons as are set forth by Dicey in his *Introduction to the Law of the Constitution.*

Twenty Years, by Cyril Alington (Oxford University Press, pp. 207), is a study in the development of the English party system during the important period between 1815 and 1835. It is a scholarly and skillful description of the important political personalities of the time and of parliamentary conflicts, enlivened by numerous anecdotes and illustrated with reproductions of contemporary cartoons. The chief criticism of the book is that the author dwells too much on parliamentary personalities and not enough upon the social and economic forces which lay behind the reform act. But what appears as a shortcoming to political scientists may be a gain for the general reader because the account of persons is more interesting to many than an account of social and economic developments.

Sir Henry Lucy's book on *Lords and Commoners* published by E. P. Dutton and Co. (pp. 256) is a delightful result of his fifty years as a parliamentary reporter. His accounts of quaint customs and of eminent parliamentarians are from personal observation and are told informally.

Another book which also discusses certain of the great figures of English public life is *Political Ideas and Persons* by John Bailey (pp. 252), also published by E. P. Dutton. This is for the most part a collection of reviews of other people's books, such as Strachey's *Queen Victoria* and Monypenny and Buckle's *Disraeli*. The last part of the book contains several essays on present-day problems such as "After the War," and "National and International." The chapters devoted to personalities are admirable presentations which leave the figures standing vividly before the reader and are more interesting than the later chapters upon general topics.

Some Revolutions and Other Diplomatic Experiences, by Sir Henry G. Elliot (E. P. Dutton and Co., pp. 300), gives sidelights on the history of several countries at interesting junctures in their affairs. The author was at Naples when the Bourbon monarchy was expelled, at Greece when King Otho was dethroned, and was in Turkey during a good many diplomatic crises, one of the most important of which was the Constantinople conference. Sir Henry's observations are not always according to the generally accredited version of history, and his book in some instances is bound to open a discussion of whether he was right or not, but taken as a whole it is a valuable contribution to the history of the events he witnessed.

The Rising Temper of the East, by Frazier Hunt (Bobbs-Merrill Co., pp. 247), is a dramatic and popular account of what the writer saw with his own eyes in India, China, Japan, Korea, Australia, Egypt, Mexico, the Philippines and Haiti. In the earlier chapters the author expresses very decidedly the opinion that the white man's domination by force over the people of the East must cease, but toward the end of the book he frankly admits that none of these countries is yet ready for the freedom which it so ardently desires. The book is intensely human and one of its most striking merits is that it emphasizes distinctly the difference between the national aspirations of the East and the so-called menace of the colored races to the white.

The Foundations of Japan, by J. W. Robertson Scott (D. Appleton and Co., pp. xxvi, 446), differs from most other books on Japan in that it is concerned largely with the life, customs, problems and institutions of the rural population rather than the rapid commercial and industrial expansion of that country or its foreign relations. The author's point

of view is summarized in the following quotation from the introduction: "The basic fact about Japan is that it is an agricultural country. Japanese aestheticism, the victorious Japanese army and navy, the smoking chimneys. . . ., the pushing merchant marine, the Parliamentary and administrative developments of Tokyo and a costly world wide diplomacy are all borne on the bent backs of . . . . . the Japanese peasant and his wife." The book is based upon personal observations and experiences which the author has presented in a most delightful manner. For the student in search of detailed facts there is an appendix of some forty pages to which the more technical and statistical data have been relegated.

The Shantung Question, by Ge-Zay Wood (Revell, pp. 372), is a history of the Shantung difficulties from the German occupation of Kiaochow, in 1897, to the settlement at the Washington conference. Available documents are given in full in the appendix. Emphasis is laid upon the negotiations at Paris, 1919, and at Washington, 1921–2. Separate chapters deal with such problems as railways and mines. The text is well supplied with extensive quotations from source material. The author considers the Washington settlement "much better than hoped for."

The Second Year Book of the League of Nations (pp. 423) edited by Dr. Charles H. Levermore has been published by the Brooklyn Daily Eagle. There is a concise description of the work of the council and assembly of the league during 1921, as well as the proceedings of the Supreme Council which is the guiding force although not technically within the League. The editor regards the Washington conference as a meeting of the Supreme Council with a few invited guests, and therefore includes a full account of the conference and the texts of the treaties and resolutions adopted thereby.

Professor W. B. Munro of Harvard University and C. E. Ozanne of the Central High School of Cleveland are the authors of a recent high school text-book, entitled *Social Civics* (Macmillan Co., pp. xiii, 697), which presents many points of difference from other books of a similar nature. In the first place the work covers a wider range than most books on civics since it includes not only an analysis of governmental framework and functions but also a number of topics dealing with economics, sociology and international relations which are pre-

sented under the heading of "Civic Activities." These topics are not considered as isolated subjects but are linked up closely with governmental action and policy. In the second place the supplementary material is more abundant than usual with over one hundred pages of carefully selected references, group problems, short studies, questions and topics for debate. In the third place the illustrations are unique, being reproductions of certain masterpieces of mural art each symbolizing some important phase of government rather than the ordinary photographs of voting machines, public buildings, etc. The chief merit of the book, however, is not to be found in the features of arrangement and illustration but in its thoroughness and accuracy and the presentation of subject matter in a manner which is scholarly and at the same time within the grasp of youthful minds for which the volume is intended.

We and our Government, by Jeremiah Whipple Jenks and Rufus Daniel Smith (published under the auspices of the American Viewpoint Society by Boni and Liveright, pp. 232), represents a new departure in the preparation of elementary text-books on American government. In addition to the body of the book there are over five hundred carefully selected illustrations arranged along the outside column of the page with a running explanation, presenting a continuous narrative which not only explains the text in a graphic manner but constitutes a story which might be read independently of the text. No more useful book could be found for continuation and evening classes in citizenship among those whose knowledge of the English language is somewhat limited, and it should also be helpful in the regular elementary and secondary schools as supplementary to a more detailed text.

For high school courses in the problems of democracy two useful text books have been made available within the last few months. R. O. Hughes' *Problems of Democracy* (Allyn and Bacon) has the conspicuous merits of the author's earlier texts, being comprehensive, well-arranged and practical in its tone. *Economics and the Community*, by John A. Lapp (The Century Co.), has been written from the viewthat the teaching of elementary economics has been hindered by the lack of concrete text material related to community life, and the plan of presentation therefore provides for a preliminary gathering of local data for each chapter before beginning the study of the text.

Civic Education, by David Snedden (World Book Co., pp. xiii, 333), is designed to aid educators who are engaged in the teaching of the

social sciences in elementary and secondary schools. Part I consists of a number of valuable suggestions to teachers as to the general meaning, importance, need and objects of civic education. Part II is devoted to a more detailed study of the topics which are mentioned in Part I; while the last part contains courses of study for civic education, problems for research and about a dozen sample studies which illustrate the value of the case method of approach to the study of various practical problems of civic education.

A special commission on Correlation of Secondary and Collegiate Education of the Association of Collegiate Schools of Business has issued a report entitled *Social Studies in Secondary Schools* (University of Chicago Press, pp. x, 117). The report takes up such topics as the importance of social studies in the business curriculum, the actual position of social studies in secondary curricula, what the collegiate schools of business administration should do to provide well-balanced instruction in such studies, and outlines a program of social studies for the junior high school which it regards as the strategic point for attack at the present time. There is a valuable appendix of about fifty pages containing references to the more important books and articles on secondary and commercial education and the teaching of special subjects in the secondary school curriculum.

Three recent college text-books which cover special fields in American history are *The Foundations of American Nationality*, by Evarts Boutell Greene (American Book Co., pp. xii, 614), *The United States of America: Through the Civil War*, by David Saville Muzzey (Ginn & Co., pp. vii, 621, xxxix) and *A History of the United States Since the Civil War*, Vol. II, by Ellis Paxson Oberholtzer (Macmillan, pp. xi, 649). Professor Greene's book is a companion volume to *The Development of American Nationality* (1783 to the present time), by C. R. Fish, and covers the events from the early explorations down through the ratification of the federal Constitution. Full recognition is given to social and economic as well as to strictly political history and the book gives evidence throughout as the work of one who is a scholar and thorough master of his subject. Professor Muzzey's book is the first volume of a history of the United States. After devoting two introductory chapters to the colonial background and the revolution the remainder is a chronicle of events from the founding of the national government down to the assassination of President Lincoln. The author's aim is to trace

the "development of the American ideal of democracy, or self government in freedom." The second volume of *A History of the United States since the Civil War* by Professor Oberholzer includes a much shorter period than the other two books (1868–1872), being an account of the early reconstruction period, the impeachment and trial of Andrew Johnson and the greater part of the first Grant administration. Covering as it does a field which has been exhaustively explored by only one other historian, James Ford Rhodes, Professor Oberholtzer's book should be read with interest by students and teachers of history. Of particular interest are the chapters on reconstructing the South, the Alabama claims (in which the author has made use of certain new sources of information), the campaign of 1868; and a graphic account of the extravagance and corruption during the era when American politics were at their lowest ebb. The vivid but sometimes biting characterization of individuals adds much to the interest of the book.

New Viewpoints in American History, by Arthur Meier Schlesinger (Macmillan Co., pp. x, 299), is an exposition and analysis of some of the factors which have influenced American history such as immigration, geography, economic influences, radicalism and conservatism, Jacksonian democracy, the doctrine of state rights and political parties. There is little especially new in the material presented, and not always in the point of view, but the student of political science will find a close correlation of history and government in this volume and an extremely readable account of some of the larger social and economic movements in American history.

American Democracy, by Willis Mason West (Small, Maynard & Co., pp. xiii, 758), is a study of American history from the old-world background down to the present day with particular reference to the constant struggle for democracy in society, politics and industry. An interesting feature of the book is the emphasis given to recent developments, practically one-fourth of the book being devoted to the period since 1876. Political and economic factors in American life are stressed, and the student interested in American government and the working of democracy will find much useful material in this book, which is written in an original and readable style.

Doubleday, Page and Co. have published a new edition of *From Isolation to Leadership* (pp. 296), by Professor John H. Latané, the original

edition of which appeared in 1918. The earlier chapter on "The War Aims of the United States" has been rewritten, and two new chapters have been added dealing with the Treaty of Versailles and the Washington conference, thus bringing the history of American foreign policy down to date.

Behind the Mirrors (Putmans, pp. ix, 236) by the anonymous writer of *The Mirrors of Washington* lacks many of the qualities which made the latter book so successful. The reader misses the incisive characterization of important personages, the penetrating anecdotes and the political gossip, and finds instead a rather dry, discursive and not always convincing description of what the author calls "The Psychology of Disintegration at Washington." Here and there are found a few clever thrusts and some interesting light is thrown upon the activities of the agricultural bloc. The author leaves the impression that the hope of future politics lies in organized minorities which will raise us out "of the governmental bog into which we have sunk."

The Extension Division of the University of Wisconsin has issued a pamphlet entitled an *Introduction to the Study of United States History*, by C. R. Fish (pp. 75), which contains many helpful suggestions for those who are organizing courses in American history.

Carter Godwin Woodson has written a book on *The Negro in our History* (The Associated Publishers pp. 393), which is intended primarily as a text for high school students. The general reader, however, desirous of knowing the leading facts of negro life and history in the United States will find this volume of great interest and value. Emphasis is placed upon the social developments of the race and its economic achievements, and the author has correlated the history of the negro in this country with that of the American people in general.

Among the recent University of Illinois Studies in the Social Sciences (vol. IX, no. 3, pp. 245) is a monograph on *English Government Finance, 1485–1558* by Frederick C. Dietz. The work is something more than a dry account of revenues and expenditures; it shows clearly that the Tudors were enabled to build up strong governments largely because of the development of new systems of revenue, and explains how the increased economic unification of England and the chief forms of wealth of the time were turned to the service of the state. The author points

out, however, that it was fortunate for the liberties of the people that the plans of the Tudors for securing income for the Crown without the sanction of the popular representatives were not a permanent success.

A Short History of the Irish People, by Mary Hayden and George A. Moonan (Longmans, Green and Co., pp. viii, 580), is a scholarly and comprehensive account of Ireland's development from the earliest times down to 1900 with a brief review of recent events from that date to 1920. Although written from a national point of view the authors have made every effort to present an accurate and unbiased narrative, and the book stands out in contrast to the usual melodramatic stories of Ireland's heroes and Ireland's woes. Even the periods of Cromwell and William III are considered without prejudice.

The Story of the Irish Nation (Century Company, pp. 402) has been very highly popularized by Francis Hackett. Both Ireland's heroes and Ireland's woes are described in this sensational version of history.

Dublin University and the New World, by Robert H. Murray (Society for Promoting Christian Knowledge, pp. 96), is a small book which tells the story of three sons of Trinity College, Dublin, who played a part in the early days of the New England colonies, namely: Samuel Mather, Increase Mather and John Winthrop, the younger, governor of Connecticut.

The C. A. Nichols Publishing Company has just issued the first volume of *The New Larned History for Ready Reference, Reading and Research* (vol. I, A-Balk, pp. xxiv, 836). This and the other eleven volumes which are to appear soon is a complete revision of the earlier work of the late J. N. Larned which first appeared in 1893–94 in five volumes under the title of *History for Ready Reference*. When complete the work will undoubtedly be the most useful universal history in the English language. The arrangement is by topics alphabetically with carefully prepared cross references, and the subject matter differs from that of most other works of a similar nature in that the articles are not written by a single authority but are quotations from various standard works, thus drawing upon the labors of several thousands of scholars and writers not only for information but for different points of view.

Volume III of the Cambridge Medieval History, on *Germany and the Western Empire* (Macmillan Co., pp. 700), covers the period from the death of Charlemagne to the latter part of the eleventh century. It includes five chapters each on France and Germany, two on England, one each on Burgundy, Italy, the Vikings, the Western Caliphate, the Church, Feudalism, and Byzantine and Romanesque Arts, and two on Learning and Literature. As noted by J. P. Whitney in the Introduction, the period covered is more than most periods what is sometimes called transitional.

In a book entitled *Labor and Democracy* (Macmillan Co., pp. xii, 213), William L. Huggins, presiding judge of the Kansas court of industrial relations, has written an account of the origin and workings of that court and of the legislation upon which it is based. The author also discusses by way of introduction the subject of government in its relation to industry. There is an appendix containing the text of the Kansas Industrial Act which was drafted largely by Judge Huggins, and five typical opinions of the industrial court. Coming as it does from one who has been in the closest possible contact with the facts, the book throws a new and authoritative light upon a most interesting experiment in American government.

A second edition of *Labor Problems and Labor Legislation* (pp. 135), by John B. Andrews, has been published by the American Association for Labor Legislation. This is a brief and simple, but excellent introduction to the subject, dealing with such topics as employment, wages, hours, safety, health, self government in industry, social insurance and enforcement of laws.

A recent monograph on *The Evolution of Industrial Freedom in Prussia*, by Hugo C. M. Wendel (New York University Press, pp. viii, 114), explains the provisions and the effects of the Prussian industrial law of 1845 (the purpose of which was to establish a uniform system of industry throughout the kingdom), the reaction of the workingmen to the law and the subsequent policy of the government resulting from various petitions and protests of 1847 and 1848.

The primary purpose of the *Principles of the New Economics*, by Lionel D. Edie (Thomas Y. Crowell Company, pp. xiii, 525) is to integrate what the author calls the ideas of the new psychological

school of economic thinkers with those of the old classical school. The first two of the Cambridge Economic Handbooks, of which J. M. Keynes is the general editor (Harcourt, Brace and Company) are *Supply and Demand*, by H. D. Henderson (pp. 181) and *Money*, by D. H. Robertson (pp. 181).

Among recent publications on economic problems are the following, issued by the Ronald press: *Human Factors in Industry*, by Harry Tipper (pp. v, 280), a study of the many experiments that are being made, especially in group organization, with a view to better industrial conditions; *Chapters on the History of the Southern Pacific*, by Stuart Daggett (pp. vi, 470), the result of some eight years of original research in public and company records and other source material; and the ninth annual edition of *Income Tax Procedure, 1922*, by Robert H. Montgomery (pp. xxi, 1911), a comprehensive and useful volume which covers the new Revenue Act of 1921 and brings the income tax procedure up to date.

Our Railroads Tomorrow, by Edward Hungerford (Century Company, pp. 332), is a somewhat non-technical discussion of the problems of American railroads, both present and future. *The Stock Market*, by S. S. Huebner (D. Appleton and Company, pp. xv, 496), is intended primarily as a text book for advanced college classes, but the business man will also find it of practical value and interest. An enlarged and almost completely rewritten second edition of the *Law of Building and Loan Associations*, by Joseph Sondheim (pp. 376), has been published by the Smith-Edwards Company.

One of the latest additions to the Social Welfare Library published by the Macmillan Company is Edward T. Devine's *Social Work* (pp. xvi, 352). The author, who has had a long experience in social work, describes the agencies which deal with the poor, the handicapped and the delinquent. There are especially useful chapters on methods of organization, coördination, finances and preparation for social work. In the *Settlement Idea* (pp. xxvii, 213), issued by the same publishers, Arthur C. Holden gives a brief survey of the social settlement movement, and then the needs of industrial communities, the methods of social work, the benefits of settlement activity, and its administration and financial support.

Wall Shadows: A Study in American Prisons, by Frank Tannenbaum (Putnam's, pp. xvii, 168), is a description of prison conditions and methods of administration based upon first-hand information obtained, largely as a result of a year's imprisonment for unlawful assembly and from a visit during 1920 to about seventy penal institutions throughout the country. The greater part of the book is taken up with the evils of our prison systems, but in the last chapter the author sets forth a constructive program for improvement.

Some Problems of Reconstruction, by Annie M. MacLean, is the title of the latest of the small volumes in the *National Social Science Series* published by A. C. McClurg and Company (pp. 150). Some of the problems touched upon are the maintenance of democracy, industrial unrest, the labor of women, the treatment of the negro, Americanization, housing, education and the dealing with radicalism.

A new book on *Socialism: An Analysis* has come from the hand of the well-known German philosopher Rudolph Eucken (Scribner's, pp. 188). A constructive statement of the Socialists' philosophy is followed by a searching examination of their ideals.

The Macmillan Company has published a small booklet entitled *Lincoln, the Greatest Man of the Nineteenth Century* (pp. 77) by Dean Charles Reynolds Brown of Yale University. Discussing first the difficult problems which Lincoln faced when he assumed office, the author enlarges upon what he regards as the chief elements in Lincoln's greatness.

Messrs. Houghton Mifflin Company have brought out a book entitled *American Portraits, 1875–1900*, by Gamaliel Bradford (pp. xii, 248), in which the author analyzes eight personalities of the last quarter of the nineteenth century. There is nothing particularly new or striking in the points of view presented, but students of history and politics will find something of interest in the sketches of James G. Blaine, Henry Adams and Grover Cleveland.

The latest of the *Smith College Studies in History* is Major Howell Tatum's *Journal while Acting Topographical Engineer (1814) to General Jackson*, edited by Professor J. S. Bassett (pp. 138). This journal

throws important light upon the battle of New Orleans and deserves to be ranked among the original narratives of that crucial campaign.

Houghton Mifflin Co. have published a book of stories concerning the work of the Pennsylvania state police by Katherine Mayo entitled *Mounted Justice* (pp. viii, 298).

RECENT PUBLICATIONS OF POLITICAL INTEREST

CLARENCE A. BERDAHL

University of Illinois

BOOKS AND PERIODICALS

AMERICAN GOVERNMENT AND POLITICS

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